

No. 15882

United States
Court of Appeals
for the Ninth Circuit

ANNA VALETTA NOCITA, Claimant of One 1957
Ford Thunderbird Automobile, etc.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Central Division

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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For Appellee:

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United States Attorney;

BURTON C. JACOBSON,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

United States District Court, Southern District of
California, Central Division

Civil No. 590-57—Y

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE 1957 FORD THUNDERBIRD AUTOMO-
BILE, Motor No. D7FH.116357, Its Tools and
Appurtenances,

Respondent.

LIBEL OF INFORMATION

The United States of America, through Laughlin E. Waters, United States Attorney for the Southern District of California, respectfully shows:

I.

That on or about November 24, 1956, at Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, duly authorized Special Agents of the Intelligence Division, Internal Revenue Service, Treasury Department of the United States, seized a certain 1953 Ford Thunderbird automobile, Motor No. D7FH.116357, its tools and appurtenances, from Roland Nocita, which said automobile had been used unlawfully to further violations of Title 26, United States Code, Sections 4411 and 4412, as follows: That said automobile had been

used by [2*] said Roland Nocita in receiving wagers without filing application for a wagering permit, and without payment of wagering occupational tax, with intent to defraud the United States of the said taxes, and in violation of said Sections 4411 and 4412, Title 26, United States Code.

II.

That by reason of these premises the said automobile has become and is subject to seizure and forfeiture pursuant to the provisions of Section 7302, Title 26, United States Code.

III.

That the said 1957 Ford Thunderbird, Motor No. D7FH.116357, its tools and appurtenances, has been appraised, as provided by law, in the sum of \$4,000.

IV.

That the said Ford Thunderbird automobile is presently in the custody of the Intelligence Division, Internal Revenue Service, stored at the G.S.A. Garage, 788 North Main Street, Los Angeles, California, or elsewhere within the jurisdiction of this Court.

Wherefore, Libelant prays that the usual process issue against the said automobile, its tools and appurtenances, and that all persons interested in and concerned in the said automobile be cited to appear and show cause why such forfeiture should

***Page numbering appearing at foot of page of original Certified Transcript of Record.**

not be adjudged, and that all due proceedings being had therein, this Honorable Court may be pleased to condemn the said automobile, its tools and appurtenances, as forfeited to the United States, and that a judgment condemning the said automobile may thereupon be made and entered, and for such other and further judgment and order as to the court may seem proper in the premises.

LAUGHLIN E. WATERS,
United States Attorney;

/s/ RICHARD A. LAVINE,
Asst. U. S. Attorney,
Attorneys for Libelant.

[Endorsed]: Filed May 6, 1957. [3]

[Title of District Court and Cause.]

ANSWER TO LIBEL OF INFORMATION

Now Comes Anna Valetta Nocita, otherwise known as Anna Valetta Ewing, by Desser and Rau and David M. Hoffman, her attorneys, and answering the Libel of Information of the Libelant, states:

I.

She is the sole owner and the only person entitled to possession of the 1957 Ford Thunderbird Automobile, Motor No. D7FH.116357, its tools and appurtenances, subject only to a balance due under a

only to a balance due under a lien to the C. I. T. Corporation.

Affiant states that although said automobile was seized by the United States, its agents and employees, and is the subject of a Libel of Information by the United States in the above-captioned proceeding, said automobile was not, nor did any part thereof, become forfeited as alleged in said Libel of Information. [6]

Affiant further states that she has read the Claim and Answer filed herein by her and on her behalf, and the same are true except as to such matters as are therein stated to be on information and belief, and as to them, she believes said allegations to be true.

/s/ ANNA VALETTA, NOCITA,
Anna Valetta Nocita, Otherwise Known as Anna
Valetta Ewing.

Subscribed and sworn to before me this 11th day
of June, 1957.

[Seal] /s/ JOSEPH PICKETT,
Notary Public in and for Said
County and State.

[Endorsed]: Filed June 24, 1957. [7]

United States District Court for the Southern
District of California, Central Division

No. 428-57—HW

UNITED STATES OF AMERICA,

Libelant,

vs.

TWO THOUSAND ONE HUNDRED FORTY
DOLLARS AND THREE CENTS, United
States Currency and Coin (\$2,140.03),

Respondent.

No. 590-57—HW

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE 1957 FORD THUNDERBIRD AUTOMO-
BILE, Motor No. D7FH.116357, Its Tools and
Appurtenances,

Respondent.

OPINION

The government filed a libel of information in each of the above-entitled actions for forfeiture of currency and coin in the sum of \$2,140.03 (Case No. 428-57) and for [8] forfeiture of a 1957 Ford Thunderbird automobile (Case No. 590-57) appraised in the sum of \$4,000. The two libels of information were ordered consolidated for trial.

Libel of information in Case No. 428-57 alleges the currency and coin had been used by Roland Nocita in receiving wagers without filing application for a wagering permit and without payment of wagering occupational tax, with intent to defraud the United States of the said taxes, in violation of Sections 4411 and 4412, Title 26, United States Code.

The libel of information in Case No. 590-57 alleges that the Ford Thunderbird automobile had been used by Roland Nocita in receiving wagers without filing application for a wagering permit and without payment of wagering occupational tax, with intent to defraud the United States of the said taxes, in violation of Sections 4411 and 4412, Title 26, United States Code.

Title 26, Section 4411, provides that there shall be imposed a special tax of \$50 per year to be paid by each person who is liable for tax under Section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

Title 26, Section 4401 (c) provides that each person engaged in the business of accepting wagers shall be liable for and shall pay the tax on all wagers placed with him.

Title 26, Section 4412 (a), provides: "Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district"——

The government, to sustain the forfeiture of the automobile and the currency and coin involved in

the two above libels, relies on Title 26, Section 7302, USCA, which provides [9] in part that it shall be unlawful to have or possess any property intended for use in violation of the provisions of the internal revenue laws or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property.

It is the government's contention that the automobile and the coin and currency in these two cases came within the provision of Section 7302, inasmuch as the automobile and the money were used in violating the provisions of the internal revenue laws.

The evidence in these cases discloses that Roland Nocita was a professional bookmaker and on or about the time alleged in the libels of information, to wit, November 22, 1956, was so engaged. The government contends the automobile and the currency and coin in question were used by Roland Nocita in engaging in the business of accepting wagers. The Thunderbird automobile was purchased November 2, 1956, and, when impounded, registered 1138 miles. Deputy Sheriffs and agents of the government testified that Roland Nocita had been observed driving the automobile in question, but no one was able to testify that any bets were made or money received or paid from the automobile. The evidence will sustain a finding that the automobile was used only for transportation of Roland Nocita.

On the 24th day of November, 1956, Roland Nocita was arrested and the car impounded. Upon his ar-

rest he was searched and there was found upon his person currency and coin in the amount of \$2,140.03, as described in the libel of information in Case No. 428-57. The government contends this money was used by the defendant in carrying on the business of bookmaking. [10]

When the government files a libel of information, parties interested in the property sought to be forfeited have a right to rely upon the allegations contained in the libel. The allegations in both libels state that the automobile and the currency had been used by Roland Nocita in receiving wagers. If the government is to prevail, it will be necessary to establish the automobile and the currency and coin in question "had been used" as alleged.

The problem is stated in *United States of America vs. One 1953 Oldsmobile Sedan*, 132 F. Supp. 14, at page 19, as follows:

"The real question, then, is whether the Government has proved by a preponderance of the evidence that the automobile in question was used in violating the internal revenue laws * * *

"The particular charge made in the libel of information was that the automobile was used by claimant to aid him in engaging in the business of wagering without having paid the Special Tax imposed under Section 4411 of the 1954 Internal Revenue Code * * *"

Our problem, then, is to determine from the evidence adduced at the hearing whether the govern-

ment has proved by a preponderance of the evidence that the Thunderbird and the coin and currency impounded were used by Roland Nocita in violating the internal revenue laws.

There is no evidence in the case that any of the currency and coin was used in any wagering transaction except for one isolated instance. Witness Arthur Higginson, a stevedore, testified that he cashed his payroll check with Roland Nocita and that after his check was cashed he paid to [11] Roland Nocita approximately ten (\$10.00) dollars due on a bet which he had placed on a horse race. Other than this testimony there is none that any part of the money was used in any wagering transaction.

When Roland Nocita was arrested and the money was found on his person, he told the arresting officers the money "was to be used" at a crap game some hours or days in the future. Although Section 7302 of Title 26, USCA, states "property intended for use" in violation of the provisions of the internal revenue laws, the government did not bring its libel of information upon the "intended use" of the statute but predicated its rights upon "actual" ("had been used") use. As a consequence the government has failed to establish by any evidence that the coin and currency in question were "used" by Roland Nocita in a wagering transaction.

Although government witnesses placed Roland Nocita in the Thunderbird at various times im-

mediately before the arrest, nevertheless, there is no evidence before the Court that the automobile was used (other than for the transportation of Roland Nocita) in a wagering transaction, except in one isolated instance.

Witness Rudolph F. Vincelli testified that he had placed bets for Roland Nocita and in November, 1956, Roland Nocita came into his place of business to pick up money due him on some of the bets; that he paid to Roland Nocita the money and after payment had been made that he walked out of the premises with Roland Nocita to a parking lot where Roland Nocita pointed out the Thunderbird automobile as being his car; got into it and drove away. As far as this transaction is concerned the Thunderbird was used to transport Roland Nocita to and from the premises in question [12] for the purpose of collecting money due on a bet. This was the only evidence produced to show the Thunderbird automobile had been used by Roland Nocita when he was engaged in the business of accepting wagers.

If § 4401(c) is limited to accepting wagers, then the automobile was not used in the accepting of wagers. However, the term "accepting wagers" should include not only the acceptance of the wagers but also payment of money, if those who gave the wagers were successful in obtaining a payoff. The Court is convinced that Roland Nocita was engaged in the business of accepting wagers on or about the 24th day of November, 1956, and that the

automobile was used at least in this one instance in the business of accepting wagers.

There is some doubt as to whether an automobile which is used solely for the purpose of transporting those who are in the business of accepting wagers would be subject to forfeiture. *United States v. Jones, et al.*, 194 F.2d 283, *United States v. One Plymouth Sedan*, 45 F.Supp. 461; *United States of America v. General Motors Acceptance Corporation*, 239 F.2d 102. However, as there is this one instance where the automobile in question was used not only to transport Roland Nocita but also to allow him to pick up the results of a wagering transaction, the Court is of the opinion this is sufficient to justify the government's claim and order forfeiture of the Thunderbird automobile.

In No. 428-57, judgment will be in favor of the claimant.

In No. 590-57, judgment will be in favor of the libelant, and the 1957 Ford Thunderbird as described in the libel of information shall be forfeited to the United States, [13] and a judgment condemning the automobile may be made and entered.

Counsel for the government will prepare findings and judgment in accordance with this opinion.

Dated: November 13th, 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed November 13, 1957.

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Comes Now the Claimant, Anna Valetta Nocita, and objects to the Findings of Fact, Conclusions of Law, and Judgment as proposed by the Libelant, and requests that this Honorable Court fix a time for the hearing of objections and the settling of said Findings of Fact, Conclusions of Law, and Judgment. Said objections are made upon the following grounds, to wit:

1. That said Findings of Fact and Conclusions of Law are not supported by the evidence and are not in accordance with the Opinion of this Court, filed on or about November 13th, 1957, in the following particulars:

A. Proposed Finding of Fact V goes beyond the issues of this case and the evidence presented therein, in that it attempts to make findings relative to the present status of Roland [15] Nocita, whereas the matters at issue concerned only his status at the time of the seizure of the forfeited property.

B. Finding VI is repetitive of the pertinent matters in Finding V.

C. Finding VII attempts to set forth a general use of the automobile in accepting and receiving wagers, whereas, according to the evidence and the opinion of this Court, the automobile was used

(other than for the transportation of Roland Nocita) only in one isolated instance, to wit, in November, 1956, Roland Nocita drove the automobile to the place of business of one Rudolph F. Vincelli, at which time he picked up some money from the said Vincelli, the result of prior gambling transactions. (At said time and place no further wagering transactions were had.)

D. The Conclusions of Law attempt to repeat the errors in the finding of evidence, particularly in lines 11 to 18, inclusive, of page 4 thereof.

2. The Claimant believes it proper that the Findings of Fact be made in the language of the Court in its Opinion, and that the Conclusions of Law be drawn as set forth therein. Claimant is in accord with the Findings of Fact as set forth by the Court in its Opinion, although disagreeing with, and objecting to, the Conclusions of Law drawn therefrom by this Court.

Dated: This 13th day of December, 1957.

DESSER & RAU and
DAVID M. HOFFMAN,
WALTER M. CAMPBELL,

By /s/ WALTER M. CAMPBELL,
Attorneys for Claimant.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 18, 1957. [16]

United States District Court, Southern District
of California, Central Division

Civil No. 590-57—HW

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE 1957 FORD THUNDERBIRD AUTOMO-
BILE, Motor No. D7FH.116357, Its Tools and
Appurtenances,

Respondent.

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT

The above-entitled matter having come on for trial, such trial being duly noticed for trial, on the 31st day of October, 1957, before the Honorable Harry C. Westover, United States District Judge, Walter M. Campbell, having appeared as counsel for the Claimant, Anna Valetta Nocita, otherwise known as Anna Valetta Ewing; Laughlin E. Waters, United States Attorney, Richard A. Lavine and Burton C. Jacobson, Assistants United States Attorney, by Burton C. Jacobson, having appeared as counsel for Libelant, United States of America, evidence having been taken, and the Court being fully advised in the premises, the Court makes the following Findings of Fact, Conclusions of Law, and Judgement: [18]

Findings of Fact

I.

The automobile under seizure herein was a 1957 Ford Thunderbird automobile, Motor No D7FH.116357. That the United States of America is the Libelant herein and that all the acts involved in this cause of action took place within the jurisdiction of this Court, in the Southern District of California, Central Division.

II.

The registered owner of said Ford Thunderbird automobile was Anna Veletta Nocita, otherwise known as Anna Veletta Ewing.

III.

That Anna Veletta Nocita, otherwise known as Anna Veletta Ewing, was the wife of Roland Nocita.

IV.

That the said Roland Nocita had the consent and permission of the said Anna Veletta Nocita, otherwise known as Anna Veletta Ewing, for the use of the said 1957 Ford Thunderbird automobile.

V.

That the said Roland Nocita has never filed an application for a wagering permit; nor did he have or has he ever had said wagering permit; nor has he ever paid the wagering occupational tax; nor

is he now or ever has registered with the official-in-charge of the Internal Revenue District as a person required to pay a special tax under Section 4412 of Title 26, United States Code.

VI.

That prior to and on or about November 24, 1956, said Roland Nocita was engaged in bookmaking activities, viz., the receiving of wagers. That said Roland Nocita engaged in said bookmaking activities without filing application for a wagering [19] permit and without payment of the wagering occupational tax, with intent to defraud the United States of said taxes, and in violation of Sections 4411 and 4412, Title 26, United States Code.

VII.

That prior to and on or about November 24, 1956, said Ford Thunderbird automobile had been used by said Roland Nocita in receiving wagers without filing application for wagering permit and without payment of the wagering occupational tax, with intent to defraud the United States of said taxes, and in violation of Sections 4411 and 4412, Title 26, United States Code.

VIII.

That the use of the said Ford Thunderbird automobile by the said Roland Nocita was a use in his business of bookmaking and was an active aid and facilitation of that bookmaking business.

IX.

That on or about November 24, 1956, at Los Angeles, County of Los Angeles, State of California, duly authorized and acting investigators of the Intelligence Division, Internal Revenue Service, Treasury Department of the United States, seized the said 1957 Ford Thunderbird automobile, Motor No. D7FH.116357, its tools and appurtenances.

X.

That at the time of the reading of the Monition of the within Libel, a default was entered as to all parties not appearing, with the exception of Anna Valetta Nocita, otherwise known as Anna Valetta Ewing, who then filed a Claim and Answer.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law: [20]

Conclusions of Law

I.

This Court has jurisdiction to entertain the within Libel and to decree a forfeiture.

II.

The 1957 Ford Thunderbird automobile has been used in violation of Sections 4411 and 4412 of Title 26, United States Code, and is subject to seizure and forfeiture pursuant to the provisions of Section 7302 of Title 26, United States Code. That when it is shown that a vehicle is being used by a bookmaker in his bookmaking activities when he has not filed an application for a wagering permit

and has not paid the wagering occupational tax, and has not registered with the Internal Revenue Director as required by law, this is sufficient evidence to show that the vehicle is being used in carrying on an illegal operation to further violations of Title 26, Sections 4411 and 4412, United States Code; and that it is not necessary to find physical evidence of the violation within the said vehicle, for the reason that there is no concrete physical evidence needed in the making of bets, and no agreement in writing is required for the making of said bets. Therefore, the use of the vehicle as described above, subjected it to forfeiture pursuant to Section 7302 of Title 26, United States Code.

III.

That the validity of the issuance and service of the Warrant of Arrest on Roland Nocita in the possession of the officers that seized the respondent vehicle is not material to the issues of this case.

IV.

The seizure of the respondent vehicle was not illegal. [21]

V.

Roland Nocita was a person required to have a stamp and to register pursuant to the provisions of Sections 4401, 4411 and 4412 of Title 26, United States Code.

VI.

The Libelant, United States of America, has proved by a preponderance of the evidence that the

respondent Ford Thunderbird automobile was used by Roland Nocita in violating the Internal Revenue laws.

VII.

The Court having found that the respondent Ford Thunderbird automobile was used in violation of the Internal Revenue laws of the United States, and therefore said automobile shall be forfeited, and judgment entered in favor of the Libelant, and the Libelant to have its costs.

The Court having made its Findings of Fact and Conclusions of Law, now gives judgment as follows:

Judgment

Good Cause Appearing Therefor, It Is Hereby Ordered, Adjudged and Decreed that the said 1957 Ford Thunderbird automobile, its tools and appurtenances, be and the same are hereby condemned and forfeited to the United States of America, and

It Further Appearing that application has been filed in the above-entitled action by the Administrator of General Services, General Services Administration, pursuant to the provisions of 49 Stat. 880 (40 U.S.C. 304i) and 63 Stat. 380 (5 U.S.C. 630a) for delivery of said automobile to the Regional Commissioner of Internal Revenue, Treasury Department, San Francisco, California, for official use. [22]

Now, Therefore, It Is Ordered that the said 1957 Ford Thunderbird automobile, Motor No. D7FH.-

116357, its tools and appurtenances, be delivered by the United States Marshal to the Regional Commissioner, Internal Revenue Service, Treasury Department, San Francisco, California, or a duly appointed representative, for official use, and when no longer needed for official use by said bureau, be disposed of in the same manner as other surplus property in accordance with law.

Dated: This 19th day of Dec., 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

Presented by:

/s/ BURTON C. JACOBSON,
Assistant U. S. Attorney.

Affidavit of Service by Mail attached.

Lodged December 11, 1957.

[Endorsed]: Filed and entered December 19, 1957. [23]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Anna Valetta Nocita, the Claimant herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 19th day of December, 1957.

Dated: This 23rd day of December, 1957.

/s/ WALTER M. CAMPBELL,
Attorney for Claimant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 26, 1957. [25]

In the United States District Court, Southern
District of California, Central Division

No. 428-57—HW Civil

UNITED STATES OF AMERICA,

Libelant,

vs.

TWO THOUSAND ONE HUNDRED FORTY
DOLLARS AND THREE CENTS, United
States Currency and Coin (\$2,140.03),

Respondent.

No. 590-57—HW Civil

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE 1957 FORD THUNDERBIRD AUTOMO-
BILE, Motor No. D7FH.116357, Its Tools and
Appurtenances,

Respondent.

Honorable Harry C. Westover, Judge Presiding.

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

Appearances:

For the Libelant:

LAUGHLIN E. WATERS,

United States Attorney, by

BURTON C. JACOBSON,

Assistant United States Attorney.

For the Respondents:

DESSER, RAU & DAVID M. HOFF-
MAN, by

WALTER M. CAMPBELL, ESQ.

Thursday, October 31, 1957—10:00 A.M.

The Clerk: 428-57—HW, United States of America v. Currency \$2,140.03, and 590-57—HW, United States of America v. One 1957 Ford Thunderbird Automobile.

Mr. Campbell: Walter M. Campbell for the claimants in both cases.

Mr. Jacobson: Burton Jacobson for the Government in both cases.

The Court: Has there been an order to consolidate the cases for trial?

Mr. Jacobson: I believe Judge Yankwich did enter such an order.

Mr. Campbell: I don't know if he did or not. We are agreeable. I would point out to your Honor—

The Court: If no order has been made, I will make an order now consolidating them. [4*]

* * *

Mr. Jacobson: There is still the matter of the stipulation.

Mr. Campbell: Yes; I will enter into the stipulation that at the time involved, namely, the 24th day of November, 1956, that Roland Nocita had not to that date filed an application for a wagering permit, and had not paid the wagering occupational tax.

The Court: I don't suppose you will admit that your client was engaged in a wagering transaction at this particular time?

Mr. Campbell: On that date, no. Prior to that date there is no question.

The Court: Prior to that date, but not on that particular date?

Mr. Campbell: That is right. Prior to that date, yes, [12] your Honor. [13]

* * *

Mr. Jacobson: All right. Mr. James Donley, will you take the stand, please?

JAMES P. DONLEY

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: James P. Donley, D-o-n-l-e-y.

Direct Examination

By Mr. Jacobson:

Q. Mr. Donley, what is your occupation?

A. I am a special agent with the United States Treasury Department Intelligence Division.

(Testimony of James P. Donley.)

Q. Is that the division that investigates wagering violations? A. It is.

Q. In the month of November, 1956, were you so engaged? A. I was.

Q. Do you know a person by the name of Roland Nocita? A. I do.

Q. Do you see that person in this courtroom?

A. Yes; I do.

Q. Would you point him out, please?

Mr. Campbell: Oh, we will waive [14] identification.

The Court: All right.

Q. (By Mr. Jacobson): When was the first time that you had an occasion to see Roland Nocita?

A. It was on the evening of November 20, 1956, at approximately 6:10 p.m.

Q. Where was it that you saw him on that date?

A. I saw him in a Ford Thunderbird, 1957, black with a white top, proceeding south on Long Beach Boulevard, on or about the intersection of Long Beach Boulevard and Firestone.

Mr. Campbell: Pardon me. Did the witness say November 26th?

Mr. Jacobson: 20th.

The Court: November 20th. What time of day was it?

The Witness: Approximately 6:10, your Honor.

The Court: Was it dark?

The Witness: It was dark, yes.

Q. (By Mr. Jacobson): Now, Mr. Donley, did

(Testimony of James P. Donley.)

you happen to observe whether or not this '57 Thunderbird had a license on it?

A. Yes, I—— [15]

* * *

Q. (By Mr. Jacobson): Did you observe whether or not that Thunderbird had a license on it?

A. Yes; I did.

Q. Was it a paper plate or a metal license?

A. It was a paper plate.

Q. What was the number, if you know?

A. The number was 0573243.

Q. Did you have occasion that evening to follow that car? A. I did.

Q. Was Mr. Nocita driving it?

A. He was.

Q. Where did you follow it?

A. Well, when I first saw the car, it drew up on the right side——

* * *

The Witness: When I first saw the car, it drew up on the right-hand side of the vehicle that I was driving, going south on Long Beach Boulevard, and I recognized Mr. Nocita [16] from a picture that I had, and I thought that inasmuch as somebody——

Mr. Campbell: I am going to object to what he thought.

The Court: You cannot testify to what you thought. All you can testify to is to what you did, or what you saw, or what you said to the defendant or in his presence.

(Testimony of James P. Donley.)

The Witness: Yes, your Honor. I followed that Thunderbird south on Long Beach Boulevard to approximately Rosecrans and Lime Avenue in Compton.

Q. (By Mr. Jacobson): Now, after that date, Mr. Donley, did you have occasion to see Mr. Nocita again? A. Yes; I did.

The Court: May I inquire, or may I stop you here and ask a question? Is this the only observation you had of the claimant on November 20th?

The Witness: Yes, sir; it is.

The Court: That is, you followed him in the car, and you followed the car down to Compton?

The Witness: That is right.

The Court: You did not talk to him?

The Witness: No, sir.

The Court: All right.

Q. (By Mr. Jacobson): To where did you follow the car?

Mr. Jacobson: This is important, your Honor.

The Witness: I followed the car approximately as far as [17] Rosecrans and Lime Avenue. However, we observed the car going down Lime Avenue, and turning right on San Vicente.

Q. (By Mr. Jacobson): So it was right near Lime Avenue and San Vicente?

A. Yes. Well, the car stopped there. It turned right on San Vicente, stopped there for a moment, and then backed out, as if to look up the street.

Mr. Campbell: I ask that the last go out.

The Court: It may go out.

(Testimony of James P. Donley.)

Q. (By Mr. Jacobson): So the car stopped somewhere along on Lime Avenue there; is that true?

A. It stopped on the corner of Lime and San Vicente.

Q. All right. Thank you. Now, I ask when was the next time you had occasion to see Mr. Nocita?

A. I saw him approximately at 6:00 o'clock on November 24, '56.

* * *

Q. (By Mr. Jacobson): Where did you see Mr. Nocita on that occasion? [18]

A. I saw him in the 6800 block on South Central Avenue.

Q. I don't remember, but did you say what time of day it was?

A. It was approximately 6:00 o'clock in the evening.

Q. Who was with you?

A. Special Agent Katayama and Special Agent Virgil Crabtree, and Deputy Sheriff Gilbert Shulton, Sheriff's Sergeant James Johnson, and Deputy Sheriff Carl Seltzer.

Q. Did you see a 1957 black Thunderbird there also? A. I did.

Q. Where was it?

A. That was parked facing south directly in front of the Goodyear plant in about the 6800 block of South Central Avenue.

The Court: May I inquire, you didn't see the claimant in the Thunderbird?

(Testimony of James P. Donley.)

The Witness: No, your Honor.

The Court: Where was he when you saw him? You haven't told us yet.

The Witness: When I first saw him he was in the rear seat of one of the deputy sheriff's personal cars in custody.

The Court: So when you saw this Thunderbird and the claimant, the claimant then was in custody in the rear seat of the deputy sheriff's car? [19]

The Witness: That is right, your Honor.

Q. (By Mr. Jacobson): Now, did you have occasion to go over and talk to Mr.—well, let me ask you: You say he was in custody in the rear seat of the deputy sheriff's car. Was he arrested, do you know?

A. No; he was being detained at that time, when I first saw him.

Q. What did you then do?

A. Well, Special Agent Katayama and I brought an arrest warrant to Special Agent Crabtree, who handed it to Mr. Nocita.

Q. Did you hear Mr. Nocita at that time say anything about that Thunderbird? [20]

* * *

The Witness: Well, at that time I requested Mr. Nocita to give me the keys to the Thunderbird, so that we could effect the search of it.

Q. (By Mr. Jacobson): And did he?

A. And he didn't until he was shown the arrest warrant, and at that time he obtained the keys from a third party and allowed the search to be made.

(Testimony of James P. Donley.)

Q. I want to repeat the question: Did he at that time say anything about the car? Did he say that the Thunderbird [21] was his?

A. Yes; he did. He said, "I want to take care of my car."

Q. Did he indicate which car he meant by that?

A. Yes; he meant the Thunderbird.

Mr. Campbell: May I have that answer read?

The Court: It may go out.

Mr. Campbell: I understood him to say he assumed.

The Court: He said he meant the Thunderbird, which is purely a conclusion upon the part of this witness. You can testify to what he said. What did he say?

The Witness: He said he wanted to take care of that car, and he indicated the Thunderbird.

Mr. Campbell: I ask that the last be stricken as his conclusion.

Q. (By Mr. Jacobson): Did you see him make any gesture toward the Thunderbird?

The Court: Just a moment. I will overrule the objection. You said he indicated the Thunderbird. How did he indicate?

The Witness: Well, your Honor, that was the only car that we were talking about at that time.

The Court: You haven't testified that anybody was talking about any car, and you were asked about the conversation, and the only conversation you have given us so far is that [22] Mr. Nocita said, "I want to take care of that car."

(Testimony of James P. Donley.)

Now, if you will just go back and give us the entire conversation that you had with the claimant, maybe we can come to the same conclusion that you came to, that he did refer to the car.

Q. (By Mr. Jacobson): Just tell us the entire conversation, please.

A. First of all, he refused to——

The Court: Now, he didn't ask you what he refused to do. I will ask you, what did he say and what did you say?

The Witness: Well, I asked him for the keys to search the car, first, and he said he didn't have the keys.

And I asked him, "Well, who does have them?"

And there was a lapse of maybe five or six minutes, and Mr. Nocita called across the street to a person on the other side of the street, which would have been on the east side of the street, and told him to bring the keys over, that it was all right, and so this man threw the keys over, and we got the keys and searched the Thunderbird.

Q. (By Mr. Jacobson): Mr. Donley, did those keys fit that Thunderbird?

A. They did.

Q. Did you notice the license number of that Thunderbird that you searched that night?

A. Yes. [23]

Q. What was it? A. It was MVY 377.

Q. Those were metal plates, then?

A. They were.

Q. What color was this Thunderbird?

(Testimony of James P. Donley.)

A. It was black with a white or a cream top, hard top.

Q. What year was it? A. 1957.

Q. Now, did you have an occasion to interview Mr. Nocita later that evening? A. I did.

Q. Where?

A. In the office of the South Gate Police Department.

Q. What time was that?

A. It was around 9:00 o'clock, 9:15.

Q. In substance will you——

A. It was 9:40 p.m., I see from my notes.

Q. Will you please relate the substance of that interview?

Mr. Campbell: May we have the further foundation first, if the court please, as to the parties present?

The Court: Fix the time and place, and establish who was there.

Q. (By Mr. Jacobson): Who was there, please, Mr. [24] Donley?

A. Well, there was Mr. Nocita, Special Agent Crabtree, and myself at the beginning of the interview.

Mr. Campbell: For the purpose of the record I will again make the objection on behalf of Mrs. Nocita, as to the conversation being hearsay as to her.

The Court: Overruled.

Q. (By Mr. Jacobson): Now, will you please relate the substance of what that conversation was?

(Testimony of James P. Donley.)

A. Well, Mr. Crabtree advised Mr. Nocita of his constitutional rights.

Mr. Campbell: I ask that that be stricken as a conclusion of the witness, if the court please.

The Court: Sustained.

Q. (By Mr. Jacobson): Just tell us what you said, and what he said, and what anyone else who was there at that conversation said.

A. Mr. Nocita said that he did accept football wagers but that he did not book horse races and he said that the money in his possession was for a crap game to be held at the 6800 Club tonight, and the 6800 Club is a smoke shop.

He said that the——

The Court: Wait a minute. Let's go back and get that. He said the money was to be used in a crap game?

The Witness: That's right, your Honor. [25]

The Court: All right.

The Witness: He said that the markers we found in his pockets were not his, that is, the markers for horse race markers.

Mr. Campbell: I ask that the last be stricken as a conclusion of the witness.

The Court: It may go out.

Mr. Jacobson: Pardon me? How did you state the last?

The Court: He said the markers were horse race markers. We don't know anything about that. He said the markers were not his. Now, I don't know what kind of markers he had. He might have had

(Testimony of James P. Donley.)

a tin can, or he might have had a piece of paper, or it might have been anything.

Mr. Jacobson: May it not be admitted, the fact that it was what Mr. Nocita said?

Mr. Campbell: He added his conclusion as to what they were.

The Court: He added his conclusion. He can't give us his conclusion. He can state what Mr. Nocita said.

Q. (By Mr. Jacobson): What exactly did Mr. Nocita say about those pieces of paper?

A. He said that, "The markers and the O-sheets aren't mine."

Q. All right. What did you do?

A. He said he was holding them for a person, but he [26] refused to give me the name of the person that he was holding them for.

I asked him when he was last employed, and he said he was employed in 1949, when he worked as a bartender at the Atlantic Club in Compton.

Q. In 1949 he said was the last time he had been employed?

A. That's right.

Q. Did he say anything about the Thunderbird?

A. Yes. He said that he owns a 1957 Thunderbird in his wife's name, and he said that he had only made the down payment on it by trading his 1954 Pontiac at Ben Barkley's at Slauson and Central, and he was financing both the Thunderbird and a 1957 Ford sedan through a CIT and a PFC, respectively.

(Testimony of James P. Donley.)

Q. Was there any more of the conversation, Mr. Donley?

A. I asked him—I said, “Well, what were you doing at the smoke shop?”

He said that he held the master lease there, and that he pays \$110.00 a month on that lease, and that he had formerly subleased the place to Joe Mangiameli, but that six months previously Mangiameli had been arrested for bookmaking there, and that since Mr. Nocita was stuck with the lease, he went there to conduct crap games until the lease was over. [27]

The Court: Is that what he said?

The Witness: Yes, your Honor.

The Court: You said this was in front of 6800 South Central Avenue?

The Witness: No, your Honor. This was in the South Gate Police Department that this conversation took place.

The Court: Yes, I know, but you were talking about the smoke shop. Where was the smoke shop?

The Witness: At 6800 South Central, your Honor.

Then I asked Mr. Nocita what his occupation is, and he said, “I more or less invest.”

He stated that he personally took small football bets from individuals, but would rebet the money on another game with other individuals.

Q. (By Mr. Jacobson): Did he say anything further as to that?

A. Well, I told him that I was thinking about

(Testimony of James P. Donley.)

making an examination of his income tax returns, and, in fact, I told him that they had been examined, and I asked him what the source of his income was, and he said he figures he makes eight or nine hundred dollars a month.

* * *

The Witness: He said that he figures he makes eight or nine hundred dollars a month in his investments, and that [28] that is what he reports.

Q. (By Mr. Jacobson): Was there anything further?

A. I think that pretty completely covers the conversation except for personal information that Mr. Nocita gave me.

Q. Did you question him regarding any background or any prior arrests?

* * *

The Witness: I don't believe I did ask him if he had any prior arrests.

Mr. Jacobson: Thank you. No more questions.

Cross-Examination

By Mr. Campbell:

Q. Mr. Donley, I understand your testimony is that on [29] this occasion on November 20th, when you saw Mr. Nocita, he was alone in the car?

A. He was.

Q. And he was alone in the car the last time you saw him on that occasion? A. He was.

(Testimony of James P. Donley.)

Q. And the last you saw of him on that day, he was still in the car, wasn't he?

A. That's right.

Q. He had stopped at an intersection; isn't that correct?

A. No, sir. He turned the corner around the intersection, and then stopped.

Q. And then stopped. Now, did you observe, or, what did you do then? Did you drive on?

A. No; I waited approximately a block away.

Q. All right. What did you observe?

A. Then I observed the car—after crossing the intersection and making the right-hand turn, I observed that car back up slightly, perhaps for ten feet, and then proceed on west on San Vicente.

Q. All right. So he never got out of the car on that occasion you saw him?

A. Well, there was a lapse of about five minutes from the time that he made the turn until I saw him last. [30]

Q. Did you ever see him get out of the car at that time? A. No, sir.

Q. So far as you know, he never got out of the car? A. That's correct.

Q. Did you see anybody approach the car at any time? A. No; I didn't.

Q. All right. So far as you know, he may have stopped to eat a sandwich?

The Court: Now, don't speculate. Don't speculate.

(Testimony of James P. Donley.)

Mr. Campbell: All right, your Honor. I am sorry.

Q. Now, on this occasion at 6:00 p.m. on the 24th of November, when you arrived on the scene, and you say that Mr. Nocita was in custody or under restraint, I think you put it, or was being detained by one of the deputy sheriffs; is that right?

A. That's correct.

Q. I take it that he was being detained until the Federal men arrived; is that correct?

A. That's not correct. Special Agent Crabtree was in the car with Deputy Sheriff Shulton and Seltzer at the time.

Q. I see. So that, as far as you know, Special Agent Crabtree was there at the time of his original detention; is that right? [31]

A. That's correct.

Q. But you and Mr. Katayama, I understood you to say, arrived with some warrant for his arrest; is that correct?

A. That's correct.

Q. Did you also have a warrant for the seizure of any property?

Mr. Jacobson: I will object to the question as being irrelevant and immaterial, and calling for a conclusion.

The Court: Overruled.

The Witness: No; we didn't.

Q. (By Mr. Campbell): Did you ever obtain one?

A. Never.

Q. Now, the place where the car was located, where you first saw Mr. Nocita being detained, was

(Testimony of James P. Donley.)

immediately adjacent to his place of business, was it not?

A. I would say it was directly across the street.

Mr. Campbell: Directly across the street.

The Court: Counsel, let's clear up something. You say "his place of business," and, according to this witness, the testimony was that Mr. Nocita had a master lease on the premises. I don't know whether he operated the premises, or whether he leased them to someone else. When you call it his place of business, I think it is a misnomer.

Mr. Campbell: That will develop, I think, if not through this witness, through the other Government witness. [32]

Q. The place of business referred to is a cigar, and magazine, and tobacco store, is it not, with a room in the back?

A. Well, the name of it is the Smoke Shop.

Q. The Smoke Shop? A. That's right.

Q. Do you know of your own knowledge whether that was Mr. Nocita's place of business? Did he operate the Smoke Shop?

A. I believe that subsequent to the November 24th——

Mr. Jacobson: Excuse me, Mr. Donley. Only if you know is what he is asking.

The Court: Now, do you object? I will sustain the objection because he can't testify to what he believes.

Mr. Campbell: I didn't ask for his belief. I asked him if he knew.

(Testimony of James P. Donley.)

The Court: That is right, and he can answer that "Yes" or "No."

Q. (By Mr. Campbell): Do you know whether Mr. Nocita operated that Smoke Shop personally?

A. You mean prior to November 24th?

Mr. Campbell: Yes.

The Court: No; on November 24th.

Q. (By Mr. Campbell): Up to and including November 24th? Up to and including the time you went out there at 6:00 p.m. [33] and saw him in detention?

A. I had been told that he——

Mr. Jacobson: I will ask that that be stricken.

The Court: Sustained. If you don't know, just say you don't know.

The Witness: Well, your Honor, I had been told previously.

The Court: You can't testify to what you have been told.

Q. (By Mr. Campbell): You have no personal knowledge, I take it?

A. That's correct.

Q. Were you ever in the place of business?

A. Yes.

Q. Prior to November 24th?

A. No.

Q. You have been there subsequent to November 24th?

A. That's correct.

Q. And you have observed Mr. Nocita since that time operating the business, have you not?

A. No, sir.

Q. You have never observed him on the premises?

A. No, sir.

Q. Were you there during business hours?

(Testimony of James P. Donley.)

A. I was. [34]

Q. On how many occasions? A. Twice.

Q. Twice. And at what hours of the day?

A. Well, I would say the first time I was there was around 3:00 o'clock in the afternoon.

Q. And the other occasion, what time of day was it?

A. It would have been around noon.

Q. Around noon. The place was open for business on both occasions? A. Yes; it was.

Q. Now, you say you searched the Thunderbird on that occasion; is that correct?

A. That's correct.

Q. What did you find in it?

A. I found some clothing.

Q. Some clothing. Anything else?

A. I searched the trunk of the car, and that's what I found; clothing, and a golf bag, and some golf balls and clubs.

Q. Personal belongings?

A. That is correct.

Q. Nothing else? A. Nothing else.

Q. I presume the automobile tools, too?

A. Well, I don't recall the tools. [35]

Q. That is all you found in the trunk?

A. That's right.

Q. And you were the person who on that occasion unlocked the trunk, weren't you?

A. I was.

Q. And you were the first person to examine the trunk? A. That is correct.

(Testimony of James P. Donley.)

Q. You say that later at the police station, and in the presence of the various officers that you have described, Mr. Nocita told you that the money he had on his person was to be used in a crap game later that evening? A. That's correct.

Q. Is that all he said about the money?

A. I think that there was—he said that he had borrowed it.

Mr. Jacobson: I ask that be stricken. He said he thinks.

Q. (By Mr. Campbell): First answer "Yes" or "No," if he said anything else about the money.

A. Yes; he did.

Q. What did he say about the money?

A. He said that some of that money wasn't his.

Q. He told you some of that money he had borrowed that day, did he not?

A. That's correct.

Q. And he told you whom he borrowed it from, didn't he? [36] A. No, sir; he didn't.

Q. Did he tell you at any time whom he had borrowed it from? A. No, sir.

Q. Didn't you make an investigation yourself to determine if it had been borrowed on that date?

A. Subsequent to that time we have attempted to make such an investigation, yes.

Q. And you found that it was true, that a portion of that money had been borrowed on that very day, did you not? A. No, sir.

Q. Did you remove the money from the person of Mr. Nocita? A. No, sir.

(Testimony of James P. Donley.)

Q. Did you see it removed? A. Yes, sir.

Q. Where was Mr. Nocita at the time it was removed from his person?

A. He was sitting in the back seat of the personal automobile of one of the deputy sheriffs.

Q. And at that time in your presence he was searched? A. That's correct.

Q. Was he in handcuffs, or were his arms free at that time?

A. He was handcuffed, as I recall. [37]

Q. Was he handcuffed when you arrived on that date? A. Yes, sir.

Q. How many people were in the car when you observed him being searched?

A. Special Agent Crabtree, I believe, was in the front seat of the car.

Q. Yes.

A. And Deputy Sheriff Shulton was in the back seat, and on the other side of Mr. Nocita was also in the car Mr. Carl Seltzer.

Q. Two of the police officers were in the back seat with him, and Mr. Crabtree was in the front seat? A. As I recall, yes, sir.

Q. And where were you?

A. I was standing between the curb and the sidewalk, observing what was going on.

Q. Did anyone at that time and during the course of the conversation in Mr. Nocita's presence state how long he had been held under detention there prior to your arrival?

A. I knew how long he had been.

(Testimony of James P. Donley.)

Q. How long had he been under detention?

A. I would say not more than—oh, I would say about less than ten minutes.

Q. All right. Now, at the time that the money was removed from his person, so we may have no misunderstanding, [38] this is the \$2,100.00 referred to, is it not? A. Pardon?

Q. How much was taken from his person?

A. \$2,145.00, I believe.

Q. That is the same money referred to in the libel here before this court, is it not?

A. That's correct.

Q. All right. Now, how was that money being carried? In other words, was it all in a wallet?

A. No.

Q. Isn't it a fact that a portion of it was in a bank envelope? A. That's correct.

Mr. Campbell: May that envelope be produced at this time?

Mr. Jacobson: We don't have it.

Q. (By Mr. Campbell): In taking the money, did you take the envelope?

A. I didn't take the money.

Q. I see. Was the money still in the envelope after it was taken from his person? A. Yes.

Q. And who had the money at that time, the last you saw it?

A. The last I saw it, I believe it was Deputy Sheriff [39] Carl Seltzer.

Q. And you have not seen the money, nor the envelope since that time, is that correct?

(Testimony of James P. Donley.)

A. Oh, yes; I have seen them since.

Q. Have you seen the envelope since that time?

A. Yes; I saw the envelope in the Sheriff's Office over in the South Gate Police Department, when Carl Seltzer and I counted the money in the presence of Mr. Nocita.

Q. All right. And is that the last time you saw the envelope?

A. To the best of my recollection, I believe it is.

Q. Did you see anything done with the envelope on that occasion? A. No. [40]

* * *

Q. (By Mr. Campbell): You were present when it was counted? A. That's right.

Q. You helped count it? A. I did.

Q. What is your best recollection as to the amount that was in that envelope?

A. That there was \$1,000.00.

Q. All right. Did the envelope have on the outside of it the imprint of a bank?

A. To the best of my recollection, it did.

Q. And do you recall what bank?

A. I believe it was the Bank of America.

Mr. Jacobson: I will move that that answer be stricken.

The Court: Denied.

Mr. Campbell: I am asking for his best recollection, if the court please.

The Court: Denied.

Mr. Campbell: And it is cross-examination.

(Testimony of James P. Donley.)

The Court: I think that the Government should produce the envelope here as a part of the evidence, and I don't know, but the Government usually does not destroy any evidence at all, and if this was a narcotics case, I am quite sure the [41] Government would have the envelope, and all the containers, and everything else. It seems to me the Government ought to have the envelope somewhere, or the Sheriff's Office.

Mr. Jacobson: The only envelope that we have is the envelope from the South Gate Police Station.

Mr. Campbell: I am referring to the envelope in which the money was at the time the money was seized.

Mr. Jacobson: It is not in the Government's possession.

Mr. Campbell: Very well.

The Court: All right. The witness has testified it was in a Bank of America envelope.

Q. (By Mr. Campbell): Now, on the occasion you have previously testified about, the time you saw Mr. Nocita in the Thunderbird on November 20th, or, on November 24th at any time, on that occasion did you see Mr. Nocita in the Thunderbird car? A. No, sir.

Mr. Campbell: That is all of this witness.

The Court: Any redirect?

Mr. Jacobson: No redirect.

The Court: All right. Step down.

(Witness excused.)

Mr. Jacobson: The Government will next call Mr. Carl Seltzer. [42]

CARL SELTZER

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand and state your name?

The Witness: Carl Seltzer, C-a-r-l S-e-l-t-z-e-r.

Direct Examination

By Mr. Jacobson:

Q. Mr. Seltzer, what is your occupation?

A. Deputy Sheriff of Los Angeles County, currently assigned to the Vice Detail.

Q. Is the Vice Detail the detail that investigates bookmaking? A. Yes, sir; it is.

Q. On November 24th were you present at the arrest of Mr. Nocita? A. No, sir.

Q. Did you see Mr. Nocita on that date?

A. Yes, sir.

Q. Where did you see him?

A. In the back seat of Deputy Shulton's automobile.

Q. If you know, had he at that time been apprehended? A. Yes, sir.

Q. Then you arrived; is that correct? [43]

A. Yes, sir.

Q. Were you present at the time that the war-

(Testimony of Carl Seltzer.)

Q. Warrant referred to in Mr. Donley's testimony—first, were you just present in court and did you hear Mr. Donley testify? A. Yes, sir.

Q. Now, were you present at the time that the warrant referred to in Mr. Donley's testimony was shown to Mr. Nocita? A. Yes, sir.

Q. At the time it was shown to Mr. Nocita, did he say anything? [44]

* * *

Q. (By Mr. Jacobson): Did Mr. Nocita say anything at that time? A. Yes, sir.

Q. Did you hear what he said? A. Yes, sir.

Q. What did he say?

A. As he was handed the warrant back, he said, "You guys can search me now."

Q. Did you take part in the search?

A. Yes, sir.

Q. What did you get?

A. Numerous pieces of paper, and an envelope containing U. S. currency, and U. S. currency rolled up in a wad.

Mr. Jacobson: Will you mark these, please?

The Clerk: May I fasten these together?

Mr. Jacobson: Yes.

The Clerk: Government's Exhibits 1 and 2, for identification.

(The documents referred to were marked Government's Exhibits 1 and 2 for [45] identification.)

* * *

(Testimony of Carl Seltzer.)

Q. (By Mr. Jacobson): Now, Officer, I show you numerous pieces of paper, and ask you if you have ever seen those before?

A. Yes, sir; I have.

Q. Are those the pieces of paper that were taken in that search of Mr. Nocita on that night?

A. Yes, sir.

Q. Were they together in a group like that, or were they separate pieces of paper?

A. Both stacks as they appear now were together in one stack rolled up in a wad.

Q. Now, how long have you been attached to Vice, Officer?

A. Approximately two years.

Q. How long have you been investigating bookmaking? A. For two years.

Q. Have you had any formal education?

A. Yes, sir.

Q. Have you had any special education regarding bookmaking? A. Yes, sir.

Q. What was that? [47]

A. I had a 20-week course at Los Angeles State College in vice control, which had almost entirely to do with bookmaking and wagering, as it was conducted in Los Angeles County.

Mr. Campbell: Pardon me. What was the name of that course?

The Witness: Vice control.

Q. (By Mr. Jacobson): Approximately how many bookmaking investigations have you either conducted or been in on? A. In excess of 200.

(Testimony of Carl Seltzer.)

Q. Have you ever testified as an expert witness before regarding bookmakers and how they operate, and their paraphernalia? A. Yes, sir.

Q. About how many times?

A. Approximately thirty times.

Mr. Jacobson: Now, may I ask that these be marked?

The Clerk: Government's 3, 4 and 5, for identification.

(The documents referred to were marked Government's 3, 4 and 5, for identification.)

Q. (By Mr. Jacobson): Now, Officer, I show you Government's Exhibits 3, 4 and 5, for identification, and ask you if you have ever seen those before?

Mr. Campbell: Those particular ones, or similar ones?

Mr. Jacobson: I will even say those particular ones. [48]

The Witness: Yes, sir, I saw these three pieces of paper before.

Mr. Jacobson: What are they?

Mr. Campbell: Let's have a foundation, first, as to where he saw them before.

Q. (By Mr. Jacobson): Where did you see them before?

A. I purchased two myself from the office of the National Daily Reporter, and accompanying me was Special Agent Donley, and he purchased the third one.

(Testimony of Carl Seltzer.)

The Court: You mean you went out to a news stand, or somewhere, and just bought these exhibits?

The Witness: No, sir. I went to the place of publication.

The Court: To the place of publication?

The Witness: That's right.

Q. (By Mr. Jacobson): That is on these three?

A. Yes, sir. [49]

* * *

Q. (By Mr. Jacobson): I will again ask you, what are those exhibits, 3, 4 and 5?

A. They are commonly called scratch sheets.

Q. Can you buy them anywhere?

A. Yes, sir.

Q. Now, I refer you to Exhibit——

The Court: It is not unlawful to buy a scratch sheet, is it?

The Witness: Not to my knowledge.

The Court: And it is not unlawful to have one?

The Witness: In certain instances it is.

The Court: Well, if you have one in your possession, are you violating the law?

The Witness: There is a County ordinance which applies, that if a scratch sheet is marked up and you can prove that [51] it was used for bookmaking, it is illegal to have it in your possession.

The Court: Is it illegal to sell them?

The Witness: Not to my knowledge.

Q. (By Mr. Jacobson): Under ordinary circumstances I don't believe it is illegal to either buy or sell or possess scratch sheets, plain, ordinary scratch

(Testimony of Carl Seltzer.)

sheets without anything on them; is that right?

A. That is correct.

Q. Now, I again refer you to Exhibits 1 and 2. Did you have occasion to examine those?

A. Yes, sir; I did.

Q. And did you determine what they are?

A. Yes, sir. [52]

* * *

Q. (By Mr. Jacobson): Now, did you determine what they are, officer? A. Yes, sir.

Q. What are they?

A. They are pieces of paper commonly called betting markers, which contain symbols and letters that denote the names of horses, bettors or agents, and the amounts wagered on the horses.

The Court: May I see one of those exhibits?

(The document was handed to the court.)

The Court: All right. You may proceed.

Q. (By Mr. Jacobson: Now, directing your attention to these markers and to these scratch sheets, did you make a comparison between these?

A. Yes, sir, I did. [53]

Q. And what was the result of that comparison?

A. That People's—Government's 1, for identification, and Government's 2, for identification, are betting markers and contain wagers on horses running at various tracks throughout the United States on Thursday, November 22, and Friday, November 23, 1956.

(Testimony of Carl Seltzer.)

The Court: Now, may I see Exhibits 1 and 2, please?

(The documents were handed to the court.)

The Court: Now, can you tell me on these exhibits what the numbers 1, O, C, P mean, in your opinion?

The Witness: In my opinion it is not a "1." It is an "I," and the "O" is the letter "O."

The "I" would stand for incoming monies. The "O" would stand for outgoing monies. The "C" would stand for monies to be collected, and the "P" would stand for monies to be paid.

That first sheet is commonly called an O-sheet.

The Court: Now, what does the "G" represent?

The Witness: That would represent an agent.

The Court: What would "P" represent?

The Witness: That, too, might be an agent.

The Court: And what would "Red M" represent?

The Witness: Also an agent.

The Court: So all the names in the first column, in your opinion, are agents? [54]

The Witness: Yes, sir.

The Court: Now, on the second sheet we have five columns. The first one contains some initials. The first initials are "HD" and the next ones "HW," and the, then about halfway down we have the name, "Willie." What do those names or initials represent?

The Witness: Bettors or agents.

(Testimony of Carl Seltzer.)

The Court: And the second column represents what?

The Witness: Those figures denote names of horses.

The Court: All right. Now, 601, for instance, what is the name of the horse 601?

Mr. Jacobson: I will show you how they make that connection.

The Court: I didn't ask you how it was done. I am asking this witness. You are not testifying.

The Witness: I will have to refer, your Honor, to the National Daily Reporter for Friday, November 23rd, in order to make that comparison.

The Court: Where do you get the indication that it is Friday?

The Witness: By making—by checking the last figures in the last column on each sheet, which are payoffs for each one of these horses.

I made the checks on the scratch sheet, November 24th, which tells you what horses ran, and how much they paid, and [55] I made these checks and put the symbols, as I found the payoffs, corresponding to each one of the horses on a scratch sheet for November 23, 1956.

The Court: What is the name of the horse that is represented by 601?

The Witness: 601 would represent a horse named Model Ace in the first race at Pimlico, the first handicapper's position.

The Court: Now, in the next column we have

(Testimony of Carl Seltzer.)

a "2" with a circle around it. What does that mean?

The Witness: That would mean \$2.00 to win. The circle would indicate that the horse did win.

The Court: And in the next column there is another "2" with a circle around it. What does that mean?

The Witness: That also shows \$2.00 to place, and the circle would mean that the horse did come in for the money.

The Court: And the last column indicates "2." What does that mean?

The Witness: That would be a 12, your Honor.

The Court: Oh, is it 12?

The Witness: Yes, sir.

Mr. Campbell: I didn't get the last answer.

The Court: What does the "12" mean?

The Witness: \$12.00, that the horse came in and paid \$12.00 as a combined win and place bet. [56]

The Court: Now, in the second line the first initials are "HW." What do you think that means?

The Witness: That would be a bettor or an agent.

The Court: Then we have 603 and 625 in the next column. What does that mean?

The Witness: The 603, your Honor, would mean War Phar in the first race at Pimlico, the third handicapper's position, and the 625 would mean a parlay from War Phar to Powder Cap in the second race at Pimlico, the fifth handicapper's position.

The Court: Then the next column has—it looks

(Testimony of Carl Seltzer.)

like a "2" with a little "d" in front of it. What does that mean?

The Witness: That would mean \$2.00 to win the daily double.

The Court: There is nothing here to indicate the horse won?

The Witness: The two lines in the far end column meant that the horse did not win.

The Court: Now, the next line does not have any initials, but does that mean that "HW" carried that on?

The Witness: That is correct. The absence of ditto marks means it is a ditto mark.

The Court: And the 603 refers to the same race as it did in the line above? [57]

The Witness: That is correct, sir.

The Court: Then the next column has a "2"?

The Witness: Yes, sir.

The Court: What does that mean?

The Witness: It means \$2.00 to win.

The Court: And then the next column has a "3" with a circle around it. What does that mean?

The Witness: It means \$3.00 to place. The circle means that the horse came in and placed.

The Court: And the last column has 6.30. What does that mean?

The Witness: That means that at \$3.00, the horse paid \$6.30.

The Court: Now, on page 4 we have a symbol "Hel" in the first column. That represents an agent or a bettor?

(Testimony of Carl Seltzer.)

The Witness: That is correct, sir.

The Court: Then you have 681. What does 681 mean?

The Witness: 681 would stand for Lock's Last in the fifth race at Pimlico.

The Court: Then you have 708. What does that mean?

The Witness: Because the two figures appear on the same line, that would be a parlay. 708 would mean the sixth race at Pimlico. The 708 would be Our Lia, a horse running in the sixth race at Pimlico.

The Court: What do you mean by a parlay in regard to [58] this transaction?

The Witness: It means that the money—that if the first horse comes in, the money that is received on the first horse automatically goes on the second horse as a wager.

The Court: And then the next column has a "1." What does that mean?

The Witness: \$1.00 to win.

The Court: And then the last column has a couple of lines, and that means there was no win; is that correct?

The Witness: That is correct.

The Court: Now, according to this exhibit which we have been talking about, which is Exhibit 2—Exhibits 1 and 2 represent the same things, and they are betting tags?

The Witness: Yes, sir, they are betting markers.

The Court: Or betting markers. Now, Exhibit

(Testimony of Carl Seltzer.)

2 is composed of about 15 sheets, and there are 25 lines to the sheet, so that means about 375 transactions; is that right?

The Witness: Yes, sir.

The Court: Now, you mean to say these 375 transactions were bets placed upon the two days you have mentioned in your testimony?

The Witness: These—all the transactions on Government's 2 were for November 23, 1956.

The Court: Then according to this exhibit, that is approximately 370 or 375 transactions for that particular [59] date.

The Witness: That is correct, sir.

The Court: Now, in Exhibit 1 there are 17 sheets, and these 17 sheets represent transactions on what date?

The Witness: November 22nd.

The Court: By taking Exhibits 1 and 2 and comparing them to the Exhibits 3, 4 and 5, which you purchased out on the street, you can determine, can you, the horse, the race track and the odds—or do you have the odds?

The Witness: Well, I can determine the probable odds before the horse ran off, yes, sir.

The Court: And you say Exhibit 1 is what date?

The Witness: Exhibit 1 is November 22, 1956.

The Court: And Exhibit 2?

The Witness: November 23, 1956.

The Court: All right. I wanted to be educated in this because this is my first experience.

Mr. Jacobson: It is quite a thing, isn't it?

(Testimony of Carl Seltzer.)

May I see the markers again?

(The documents were handed to counsel.)

The Court: May I ask the witness another question?

Mr. Jacobson: Certainly.

The Court: Is there any way of telling from those two exhibits whether or not the transactions had been completed and the bets had been [60] paid?

The Witness: No, sir, there is no way of telling whether the bettors received their money or the bookmaker received his money from these sheets.

The Court: But you are satisfied that the race was run before November the 24th?

The Witness: Yes, sir.

Mr. Jacobson: All right. Now, your Honor will be interested in this:

Q. I want to refer you to this bunch of symbols right here, whether it is "HD" or "HO," 601, and in the next column a "2" with a circle, the next column another "2" with a circle, and then it looks like \$2.00 way over at the end.

Mr. Campbell: That is what Exhibit number?

The Court: That is Exhibit 2. He said already that is \$12.00. He has already testified to what those symbols mean.

Mr. Jacobson: Oh, \$12.00.

Q. Now, will you just show us how from this you are able to go back to those sheets and determine all that?

(Testimony of Carl Seltzer.)

A. Directing your attention to Friday, November 23rd, and to the National Daily Reporter corresponding to Friday, November 23rd, as I have previously testified, I have placed indicators on this scratch sheet to denote the symbols—corresponding to the symbols on Government's [61] 2, for identification.

The first symbol which he made reference to is 601. I placed the symbol "60" and the printed symbol "1," which denotes the handicapper's position in the first race at Pimlico, which would be Model Ace.

I arrived at that by checking the National Daily Reporter for November 24, 1956, on page 4, where the race results for the previous day's races are recorded.

Directing your attention to the first race at Pimlico, the winner was Model Ace, which paid \$7.40 to win, and \$4.60 to place. The wager on People's 2 was \$2.00 to win and \$2.00 to place.

Directing your attention again to the results on page 4 of November 24, 1956, the results of \$7.40 to win was for a \$2.00 bet, and the \$4.60 to place is also for a \$2.00 bet. Combining those two payoffs of \$7.40 and \$4.60, they figure up to be \$12.00, which corresponds to the \$12.00 which is on the first line of People's 2, for identification.

I did that with all the other transactions on all the markers which had payoffs on the far right column, and then noted all these corresponding numbers for the horses on the scratch sheets which gave

(Testimony of Carl Seltzer.)

me indicators for the other horses which did not have payoffs.

Q. Now, let me ask you, is this top sheet called by a different name than all the other sheets? [62]

A. Yes, sir. The top sheet, yes, sir, it is.

Q. What is it called?

A. It is commonly called an O-sheet.

Q. And what are all the other sheets called?

A. Betting markers.

Q. What does an O-sheet usually denote?

Mr. Campbell: That is objected to as calling for a conclusion.

The Court: Overruled.

The Witness: In my opinion, an O-sheet denotes the amount of money which comes in to a bookmaker, the amount of money which is to be paid out by a bookmaker, the amount of money that is owed by a bookmaker, and the amount of money that he is to receive.

* * *

Q. (By Mr. Jacobson): What was your testimony that these symbols along the far left column denote?

* * *

The Witness: In my opinion, the names and symbols on [63] the left column denote agents or bettors.

Q. (By Mr. Jacobson): Now, were you able to tell from all these pieces of paper—these markers, whether or not they were recorded on this O-sheet?

A. Yes, sir.

Q. Were they?

A. Yes, sir.

(Testimony of Carl Seltzer.)

Q. Where?

A. Directing your attention to the first line of Government's 2, there appears the letter "G," which corresponds to the "G" on the first marker of People's 2. The next column has the number 1152.00, with the letter "I" above it. The 1152.00 appears on the last page of Government's 2. I figured out all the totals of the amounts wagered, and it comes out to \$1152.00.

The next column is a zero or an "O," and beneath it is the figure 642.35. I figured up to the totals for amounts to be paid out, which appear in the last columns of all these betting markers for Friday, November 23rd, which figure out to be \$642.35. Subtracting \$642.35 from \$1152.00 leaves the figure of 509.65, which is the amount to be collected by the bookmaker.

Q. I see. Now, Officer, did you run substantially the same tests and proofs as you just testified to regarding Exhibit 2 on Exhibit 1? [64]

A. Yes, sir.

Q. And did they prove out substantially in the same way?

A. The first line in substantially the same way, yes, sir.

Mr. Jacobson: At this time I would like to offer Government's 1, 2, 3, 4 and 5 into evidence.

* * *

The Clerk: Government's Exhibits 1, 2, 3, 4 and 5 in evidence.

(Testimony of Carl Seltzer.)

(The exhibits heretofore marked Government's Exhibits 1, 2, 3, 4 and 5 were received in evidence.)

Q. (By Mr. Jacobson): Now, Officer Seltzer, I want to show you this, and ask you if you have ever seen that before?

Mr. Jacobson: Oh, excuse me. Let me just have this marked first.

The Court: It may be marked Government's Exhibit 6. [65]

The Clerk: Government's 6, for identification.

(The exhibit referred to was marked Government's Exhibit 6, for identification.)

Q. (By Mr. Jacobson): Now, Officer, I will ask you if you have ever seen Government's Exhibit 6, for identification? A. Yes, sir, I have.

Q. Tell us what that is, please, if you know.

A. That is a handwriting exemplar card used by the Sheriff's Vice Detail.

Q. Now, on the backside of this in the lower lefthand—in the righthand corner, rather, there is a signature, and it says, "Roland Nocita," and underneath that it says——

Mr. Campbell: Oh, I will stipulate that he will testify that he was present at the time Roland Nocita signed that and put the writing on there, which purports to be his writing. We can save time on that.

Mr. Jacobson: I now offer it in evidence. [66]

(Testimony of Carl Seltzer.)

The Clerk: Government's Exhibit 6.

(The exhibit heretofore marked Government's Exhibit 6 was received in evidence.)

Q. (By Mr. Jacobson): On the day of the arrest, did you observe the Thunderbird parked there on Central Avenue?

A. Yes, sir, I saw it on Central Avenue.

Q. Did you observe the license number on that Thunderbird? A. Yes, sir.

The Court: He has already testified——

Mr. Jacobson: No, he has not.

The Court: No, he has not. Excuse me.

The Witness: Yes, I saw the license number.

Q. (By Mr. Jacobson): Will you tell us what that was? A. MVY 377.

Q. Those were metal plates?

A. To the best of my recollection, it was.

Mr. Jacobson: No further questions. [67]

Cross-Examination

By Mr. Campbell:

Q. Mr. Seltzer, to your knowledge, if you know, how long had that car been parked at the place you saw it?

A. From 12:00 noon until 6:05 p.m., the 24th.

Q. From 12:00 noon until what time?

A. 6:05 p.m.

Q. That was at the time of his arrest; is that correct? A. Yes, sir.

(Testimony of Carl Seltzer.)

Q. You were not present, however, when he was arrested?

A. I was not present when he was apprehended or arrested.

The Court: Just a minute. How do you know it was parked there from 12:00 noon to 6:05 p.m.?

The Witness: I watched the automobile in that time.

The Court: They don't have any traffic cops down there? Can you park for six hours on the street at that location?

The Witness: Apparently on that day you could, your Honor.

Mr. Campbell: I didn't want to add a parking ticket to Mr. Nocita's troubles.

The Court: You say you watched the automobile during that period of time?

The Witness: Yes, sir.

The Court: All right. [68]

Q. (By Mr. Campbell): During that period of time did you ever see Mr. Nocita in the car?

A. No, sir.

Q. All right. Now, coming back to these betting markers which you have identified here as Exhibits 1 and 2, I take it you do not know of your own knowledge that any money of any kind passed hands as a result of those markers, do you?

A. Not to my knowledge, no, sir.

Q. All right. Those were, as I gather your testimony, on the person of Mr. Nocita—taken from his person?

A. That is correct.

(Testimony of Carl Seltzer.)

Q. And they were taken at the time when you observed him in the back seat of Deputy Sheriff Shulton's automobile? A. Yes, sir.

Q. And, I take it, he was handcuffed at that time?

A. We had just taken the handcuffs off of him.

Q. That was when the warrant you referred to arrived? A. Yes, sir.

Q. Up until the time you had the warrant, you had the handcuffs on him, and when the warrant came you took the handcuffs off?

A. That's right. [69]

* * *

Thursday, October 31, 1957—2:00 P.M.

The Court: You may proceed.

CARL SELTZER

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Campbell:

Q. Now, Mr. Seltzer, returning to the day of November 24th, which was the day of the arrest which you have described, I believe you previously stated that you had had the Thunderbird under observation from about noon of that day until shortly before the arrest of Mr. Nocita in that location on

(Testimony of Carl Seltzer.)

that evening; is that correct? A. Yes, sir.

Q. Had you seen Mr. Nocita on that day?

A. Yes, sir.

Q. And where was he when you saw him? I am speaking of the time prior to the arrest.

A. No, I didn't see him at any time prior to the arrest.

Q. I see. During the period, then, from 12:00 o'clock noon, or approximately then, until 6:05, when you had the [71] Thunderbird under observation, you did not see Mr. Nocita at any time?

A. That is correct.

Q. Now, I believe you stated—correct me if I am wrong—that the car was parked across from the Smoke Shop; isn't that correct?

A. I didn't state that, no, sir.

Q. Well, is that the fact?

A. Yes, sir.

Q. Directly across the street?

A. Almost directly across, yes, sir.

Q. And is that the same place of business that was referred to as under lease to Mr. Nocita?

A. I have no knowledge whether it was under lease to Mr. Nocita or not.

Q. I see. Do you have any knowledge of whether or not Mr. Nocita was conducting a business there?

A. No, sir.

Q. I am going to show you——

Mr. Campbell: I will first ask to have marked for identification a map of Los Angeles and vicinity,

(Testimony of Carl Seltzer.)

as prepared by or issued by the Automobile Club of Southern California.

The Court: That will be marked Defendant's Exhibit A.

The Clerk: Defendant's A, for [72] identification.

(The document referred to was marked Defendant's Exhibit A, for identification.)

Q. (By Mr. Campbell): And I wonder, Mr. Seltzer, if you will examine this map and locate on it the approximate location of the car and the Smoke Shop, as you observed it on the 24th of November, of 1956? Do you find it?

A. No, sir.

Q. I believe you gave the address as 6700 Central Avenue?

A. No, sir, I didn't give the address.

(The witness examined the map.)

Q. Does it refresh your recollection?

A. I don't find any listing for Central Avenue on the back of this either.

The Court: What is the nearest cross street on Central Avenue?

Q. (By Mr. Campbell): Does this refresh your recollection, that it is close to Central and Florence?

A. Yes, sir.

Q. And the actual nearest cross street would be 67th; is that correct?

A. 68th Street would be more correct.

The Court: Is that in the colored district?

(Testimony of Carl Seltzer.)

that evening; is that correct? A. Yes, sir.

Q. Had you seen Mr. Nocita on that day?

A. Yes, sir.

Q. And where was he when you saw him? I am speaking of the time prior to the arrest.

A. No, I didn't see him at any time prior to the arrest.

Q. I see. During the period, then, from 12:00 o'clock noon, or approximately then, until 6:05, when you had the [71] Thunderbird under observation, you did not see Mr. Nocita at any time?

A. That is correct.

Q. Now, I believe you stated—correct me if I am wrong—that the car was parked across from the Smoke Shop; isn't that correct?

A. I didn't state that, no, sir.

Q. Well, is that the fact?

A. Yes, sir.

Q. Directly across the street?

A. Almost directly across, yes, sir.

Q. And is that the same place of business that was referred to as under lease to Mr. Nocita?

A. I have no knowledge whether it was under lease to Mr. Nocita or not.

Q. I see. Do you have any knowledge of whether or not Mr. Nocita was conducting a business there?

A. No, sir.

Q. I am going to show you——

Mr. Campbell: I will first ask to have marked for identification a map of Los Angeles and vicinity,

(Testimony of Carl Seltzer.)

as prepared by or issued by the Automobile Club of Southern California.

The Court: That will be marked Defendant's Exhibit A.

The Clerk: Defendant's A, for [72] identification.

(The document referred to was marked Defendant's Exhibit A, for identification.)

Q. (By Mr. Campbell): And I wonder, Mr. Seltzer, if you will examine this map and locate on it the approximate location of the car and the Smoke Shop, as you observed it on the 24th of November, of 1956? Do you find it?

A. No, sir.

Q. I believe you gave the address as 6700 Central Avenue?

A. No, sir, I didn't give the address.

(The witness examined the map.)

Q. Does it refresh your recollection?

A. I don't find any listing for Central Avenue on the back of this either.

The Court: What is the nearest cross street on Central Avenue?

Q. (By Mr. Campbell): Does this refresh your recollection, that it is close to Central and Florence?

A. Yes, sir.

Q. And the actual nearest cross street would be 67th; is that correct?

A. 68th Street would be more correct.

The Court: Is that in the colored district?

(Testimony of Carl Seltzer.)

The Witness: Yes, sir.

The Court: Maybe counsel will stipulate as to the [73] location on the map. Let's not waste time.

Mr. Jacobson: You can't tell upon that map.

The Court: I don't know whether the location has anything to do with it.

Mr. Campbell: It becomes material later, your Honor. Can it be stipulated that the location referred to is close to Central Avenue and Florence Avenue?

Mr. Jacobson: I don't know if it is.

The Witness: It would be more correct to state the location is close to 68th Street and Central Avenue.

Q. (By Mr. Campbell): All right, 68th Street and Central Avenue. You would say that is accurate within a block or two; is that correct?

A. Less than a block.

Q. Accurate to within less than a block. Are you acquainted with the location of the residence of the Nocitas?

A. No, sir.

Q. I am going to refer you to Exhibit 6. I believe you testified that you took the information and this card was filled out in your presence?

A. There was a stipulation to that effect.

The Court: I think you stipulated to that.

Mr. Campbell: Oh, very well.

Q. Was this card made out in your presence?

A. Yes, sir, it was. [74]

Q. I call your attention to the residence address of 12411 Gilbert Street, Garden Grove, California.

(Testimony of Carl Seltzer.)

Do you know of your own knowledge whether or not that is the residence of the Nocitas?

A. I do not know of my own knowledge, no, sir.

Q. Are both of the locations referred to therein within the territorial limits which you cover as a deputy sheriff?

A. Garden Grove, I believe, is out of the vicinity of Los Angeles County. Therefore, it is not within our jurisdiction.

Q. Your jurisdiction is only within the City?

A. In the County of Los Angeles.

Q. Garden Grove is in Orange County, is it not?

A. I believe so.

Q. And is approximately 25 miles, is it not, from the site that you observed the automobile in front of the Smoke Shop on that occasion?

A. I have no knowledge whatsoever of the distance.

Q. All right. Now, referring to Exhibits 1 and 2, which you have identified as betting markers, together with what you term as O-sheets on the top of them, you were present when those were taken from the person of Mr. Nocita; is that correct?

A. Yes, sir. [75]

Q. And where were they on his person?

A. In his left front jacket pocket.

Q. Were they in any type of container?

A. No, sir.

Q. Were they—did they have a rubber band, or anything like that, around them?

A. Had a rubber band around them.

(Testimony of Carl Seltzer.)

Q. And they were rolled, were they?

A. They were rolled.

Q. Now, where was the money which you have referred to that was taken on that occasion?

A. There was money in an envelope, along with three checks, in his inside pocket. There was money in his right-hand jacket pocket. There was money in his pants pocket, but I cannot recall whether it was his left or right hand.

Q. The hip pocket?

A. I believe it was his front side pocket, yes, sir.

Q. I see. Was any of the money in a wallet or billfold?

A. Not to my recollection.

Q. All right. Now, let's return to the money and the envelope and the checks which you say were found in the inner pocket. That is the inner coat pocket, is it not?

A. Yes, sir.

Q. Were the checks in the envelope with the money, or were they separate from it? [76]

A. The checks were in the envelope along with the money.

Q. And what, if anything, was done with the checks?

A. I took the envelope with the money and the checks, and the other monies found in his other pockets, and gave it to Mr. Nocita and asked him to count it, which he did.

After he arrived at a figure as to the amount of the monies, he returned the money to me, and I gave it to Special Agent Virgil Crabtree.

(Testimony of Carl Seltzer.)

Q. What, if anything, did you do with the envelope that you have referred to?

A. The envelope was also turned over to Virgil Crabtree.

Q. By Virgil Crabtree, you are referring to Special Agent Virgil Crabtree of the Treasury Department; is that right?

A. That is correct.

Q. Did you observe any markings on that envelope? A. Not to my recollection.

Q. Let me ask you if you recall whether or not there was a printed bank name and address on it?

A. I don't recall whether there was anything on the envelope or not.

Q. You mean to say you did not examine the envelope for any writing or printing?

A. That is correct. [77]

Q. Did you examine the inside of the envelope for writing or printing?

A. No, sir, I did not.

Q. How much money was in that envelope?

A. Approximately a thousand dollars.

Q. When you say approximately, what do you mean? You mean exactly \$1,000.00, do you not?

A. No, sir, I am not exactly positive of the exact amount. I know it was in the neighborhood of a thousand dollars.

Q. Didn't you make a record of it at the time?

A. No, sir, I did not.

Q. All right. Did you make any record, or can

(Testimony of Carl Seltzer.)

you recall from your memory how much was in any of the other pockets?

A. There was another roll similar to that of the markers.

Q. I beg pardon?

A. There was a wad of money similar to that of the way the markers were wadded, in one of his pants pockets, which contained approximately a thousand dollars.

Q. You say similar to the way the markers were. You mean were rolled up, together with a rubber band?

A. Yes, sir.

Q. All right.

A. And there was some other money which was folded in [78] half in another pocket.

Q. Was there any coin?

A. There was a few pennies.

Q. Now, all of that you turned over to Special Agent Crabtree; is that correct?

A. That is correct.

Q. That was at the request of Special Agent Crabtree, I take it?

A. I don't remember whether he requested it or not.

Q. I see. I presume, Mr. Seltzer, that in all of your activities on that occasion of the arrest—the detention, the arrest and the subsequent interrogation, you were acting in behalf of or in co-operation with the Federal Agents?

(Testimony of Carl Seltzer.)

The Witness: Yes, sir, I was acting in conjunction with the Federal Agents.

Q. (By Mr. Campbell): You made no arrest in behalf of [79] the County of Los Angeles, then?

A. I made no arrest at all.

Mr. Campbell: All right. That is all.

The Court: Any questions?

Mr. Jacobson: I have a couple of questions on redirect.

Redirect Examination

Mr. Jacobson: Will you mark these, please?

The Court: Do you want those marked together?

The Clerk: I will mark them separately, your Honor. Government's Exhibits 7, 8 and 9, for identification.

(The documents referred to were marked Government's Exhibits 7, 8 and 9, for identification.)

Mr. Campbell: May I see them?

Mr. Jacobson: You sure may.

(The documents were handed to counsel.)

Q. (By Mr. Jacobson): Now, I have here marked as Government's Exhibits 7, 8 and 9 photostats of what purport to be checks or money orders, and I ask you if those are photostats of the checks that you just testified about on Mr. Campbell's cross-examination, that was wrapped with the money that was taken?

A. I can positively state that I do remember the name, Arthur Higginson.

(Testimony of Carl Seltzer.)

Mr. Campbell: Possibly I can shorten this. I will [80] stipulate those are photostat copies of the checks that were taken from Mr. Nocita on that occasion, and that were subsequently returned to him, the photostats having been taken before they were returned.

Mr. Jacobson: All right. I now offer these in evidence.

The Court: They may be received in evidence.

The Clerk: Government's 7, 8 and 9.

(The exhibits heretofore marked Government's Exhibits 7, 8 and 9 were received in evidence.)

Q. (By Mr. Jacobson): Now, Officer Seltzer, were those checks separate, or exactly in what condition were they when you took them from him? Were they mixed with the other money, or separate?

A. The three checks were together, and the money was segregated in the envelope.

Q. Now, how about the other money—not the money in the envelope. You testified there was some other money that was in a roll, I think you called it. Were these checks with that?

A. No, sir, they were not.

The Court: He testified the checks were in the envelope. If they were in the envelope, they couldn't be separate.

Mr. Campbell: I couldn't understand his last testimony. He said the three checks were together, and then there was money in the envelope. [81]

(Testimony of Carl Seltzer.)

The Court: I understood him to say the three checks and the money were in the envelope. Isn't that what you said?

The Witness: That is correct, but they were separate, they were not intermingled. The money was not intermingled with the checks in the envelope.

Mr. Jacobson: All right. That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. John Harris.

JOHN J. HARRIS

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand, sir, and please state your name?

The Witness: John J. Harris.

Direct Examination

By Mr. Jacobson:

Q. What is your occupation, please, Mr. Harris?

A. Partner in the firm of Harris & Harris, examiners of questioned documents.

Q. Does a part of that work consist in handwriting [82] analysis?

A. For the most part, yes.

(Testimony of John J. Harris.)

Q. For the most part. How long have you been so engaged in that business?

A. I have devoted all of my time to this work over the past nine years.

Q. Have you had any formal education?

A. Yes, I graduated from UCLA.

The Court: Maybe counsel will stipulate to the qualifications of this witness.

Mr. Campbell: Yes. I have never met this young man, but I have known of his father for many years, and he is very competent.

The Court: How long have you been engaged in the examination of questioned documents?

The Witness: Nine and a half years.

The Court: Will you stipulate?

Mr. Campbell: I will stipulate.

Mr. Jacobson: That is what I asked about before. All right.

Q. Now, Mr. Harris, I show you Government's 1, 2 and 6 in evidence, and ask you if you ever saw those before? A. Yes, I have.

Q. Now, did you make an analysis of the handwriting on those documents? [83]

A. Yes, I did.

Q. What was the result of that analysis?

A. I compared the handwriting that appears on the various sheets of paper in Exhibits 1 and 2, and compared it with the handwriting that is marked as Exhibit 6, and came to the conclusion that a small portion of the writing on 1 and 2 was

(Testimony of John J. Harris.)

written by the same person that executed the handwriting on 6.

The portions I refer to are just the names of the week, where there appears "Thurs." on the face in the lower left-hand portion of the first page of Exhibit 1, and "Thur." that appears on the second page in the lower left-hand corner of that document, and the "Thur." that appears on the reverse side of the third page of that exhibit.

And on Exhibit 2 there is a printed abbreviation for Friday, F-r-i, which appears in the center portion of the front page of that document.

Mr. Campbell: I couldn't hear that last, if the court please.

The Witness: There is a Friday, F-r-i, that appears on the bottom of the first page of that document.

Mr. Campbell: Perhaps I can save time. I apparently misunderstood counsel. I understood counsel to say that all of these things were in the handwriting of Mr. Nocita.

Mr. Jacobson: Yes. [84]

Mr. Campbell: If it is only the dates he is referring to, I think possibly we can stipulate.

The Court: It is only the days.

Mr. Campbell: Only the days, I mean. May I show this to my client?

(Conference between counsel and Mr. Nocita.)

Mr. Campbell: We will stipulate that the words

“Thurs.” and “Fri.” are in the handwriting of Mr. Nocita.

Does that satisfy you?

Mr. Jacobson: Yes. No further questions.

Mr. Campbell: No further questions.

The Court: May this witness be excused?

Mr. Jacobson: This witness may be excused.

The Court: You may be excused.

(Witness excused.) [85]

* * *

Mr. Jacobson: The Government will call as its next witness—well, I think there are a couple of stipulations that might shorten the testimony.

I believe we will stipulate if the other police officers mentioned in the transactions already testified to by Mr. Donley and by Officer Seltzer were called, they would testify substantially the same as they did on direct and cross. So stipulated?

Mr. Campbell: Yes, with the exception of Mr. Seltzer's expert testimony.

Mr. Jacobson: Of course.

Mr. Campbell: I don't presume they are all experts in that field.

Mr. Jacobson: All right. The Government calls as its next witness Mr. Arthur Katayama.

ARTHUR KATAYAMA

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand, please, and state your name? [87]

The Witness: Arthur Katayama, K-a-t-a-y-a-m-a.

Direct Examination

By Mr. Jacobson:

Q. Mr. Katayama, what is your occupation?

A. I am a Special Agent in the Intelligence Division of the United States Treasury Department.

Q. Is your division the division that investigates wagering violations? A. It is.

Q. Do you know Mr. Roland Nocita?

A. I do.

Q. Is this Mr. Nocita you see sitting here?

A. It is.

Q. When was the first time you saw him?

A. I saw Mr. Nocita for the first time in my life on November the 20th, 1956, at or about 6:00 p.m.

Q. Where was this?

A. He was driving north on Long Beach Boulevard in a black and white 1957 Ford Thunderbird.

Mr. Campbell: Isn't this covered by the stipulation that it is the same testimony that Mr. Donley gave?

Mr. Jacobson: No, he wasn't with Mr. Donley.

Mr. Campbell: Oh, Donley had him going in the

(Testimony of Arthur Katayama.)

other direction at 6:10. At 6:00 o'clock he was going north. [88] All right.

Q. (By Mr. Jacobson): Now, did you notice the license number on this Ford Thunderbird that you saw Mr. Nocita driving?

A. I did, and I have it recorded.

Q. Can I ask you, first, was it a paper plate or a metal plate?

A. It was a paper plate on the Ford Thunderbird.

Q. Do you know the number?

A. I have it recorded.

Q. Can you tell us the number that you have recorded? A. 0573243.

Q. Now, did you trail Mr. Nocita on that day?

A. We did. Mr. Nocita was proceeding north on Long Beach Boulevard.

Mr. Campbell: Apparently there is some other foundation needed here. He said, "We did."

Q. (By Mr. Jacobson): Who else was with you?

A. Special Agent Crabtree, and a Deputy Sheriff, a woman Deputy Sheriff. I do not recall her name.

Mr. Nocita was going north on Long Beach Boulevard in his Thunderbird, and he suddenly turned right into an auto court, spun around, came back and started heading south on Long Beach Boulevard.

We trailed him to the vicinity of Manchester and South [89] Long Beach Boulevard, where we lost him at a traffic light.

Q. When was the next time you saw Mr. Nocita?

(Testimony of Arthur Katayama.)

A. On November 24, 1956.

Q. Was that at the arrest?

A. Yes, it was.

Q. Did you see the black Thunderbird there?

A. I did.

Q. Did you notice the license number on it?

A. Yes, I did.

Q. Was this a paper plate or a metal plate?

A. It was a metal plate.

Q. Did you get the number?

A. I have it recorded.

Q. What was it? A. MVY 377.

Q. Now, did you have occasion to check with California Motor Vehicles to see if MVY 377 was the metal plate issued to the paper plate 0573243?

A. I did.

Q. And was it? A. Yes, it was.

Q. Now, did you have occasion to see that Thunderbird after that time? A. Yes.

Mr. Campbell: After November 24th? [90]

The Court: You mean after November 24th, or after the time he saw it?

Mr. Jacobson: After November 24th.

The Witness: Yes, sir.

Q. (By Mr. Jacobson): When?

A. On November 26, 1956.

Q. What was that occasion?

A. I was inventorying the automobile for a seizure report.

Q. Now, did you search that vehicle?

A. I did.

(Testimony of Arthur Katayama.)

Q. And was this Thunderbird seized the same Thunderbird that you have previously testified about?

A. Yes, sir. I checked the motor number against the registration and the license number given me by the Department of Motor Vehicles.

Q. You say you searched that car at that time?

A. I did.

Q. And what did you find?

Mr. Campbell: I am going to object to that.

The Court: Just a minute. May I interrupt? You were allowed to testify a moment ago when if it had been objected to, the objection would have been sustained.

In your investigation who did you find was the legal owner of the automobile? [91]

The Witness: The Universal CIT Credit Corporation.

The Court: And who is the registered owner?

The Witness: Anna Valetta Ewing.

The Court: I noticed, counsel, in the affidavit that is filed that Anna Valetta Ewing is claimed to be the registered and legal owner, both.

Mr. Campbell: I didn't know the affidavit showed other than the registered owner.

The Court: She is the registered owner?

Mr. Campbell: That is right.

The Court: And the legal owner is?

The Witness: Universal CIT Credit Corporation on Florence Avenue in Huntington Park [92]

(Testimony of Arthur Katayama.)

Q. (By Mr. Jacobson): Well, where was the car when you went down on the 26th and saw it?

A. It was at the General Services Administration Garage at 788 North Main Street, Los [93] Angeles.

* * *

Q. (By Mr. Jacobson): Did you make an inventory on that date? A. I did.

Q. Do you have a copy of that inventory here?

A. Yes, it is in the file.

Mr. Jacobson: I would like this marked for identification.

The Clerk: Government's 10, for identification.

(The document referred to was marked Government's Exhibit 10, for identification.)

Mr. Campbell: May I see that?

Q. (By Mr. Jacobson): I place before you Government's 10, for identification.

Mr. Campbell: I did not realize, and maybe we can save time again, that what this is is the fact that they found Mr. Nocita's driver's license in the glove compartment. I will stipulate that Mr. Nocita's driver's license was in the glove compartment of that car.

Mr. Jacobson: All right. Fine. I offer Exhibit No. [94] 10 into evidence.

The Court: It may be received into evidence.

The Clerk: Government's Exhibit 10.

(The exhibit heretofore marked Government's Exhibit 10 was received in evidence.)

(Testimony of Arthur Katayama.)

Mr. Jacobson: No further questions.

The Court: Any questions?

Mr. Campbell: Yes, I have a few.

Mr. Jacobson: Excuse me. I am sorry, but there is a further question. Well, that might be obviated by a stipulation.

The Court: I would like to ask a question from somebody. I don't know who can answer it. The affidavit for return of the automobile is signed by Anna Valetta Nocita, and it says, "Now comes Anna Valetta Nocita, otherwise known as Anna Valetta Ewing." The driver's license is Roland Nocita. Now, who is Roland Nocita?

Mr. Campbell: That is the husband, your Honor.

The Court: Oh, that is the husband?

Mr. Campbell: Yes.

The Court: Oh, I see. I thought it was Mrs. Nocita's driver's license that was found in the car.

Mr. Jacobson: No. That is the importance of it.

Mr. Campbell: No, this is the husband's.

Mr. Jacobson: It was Mr. Nocita's driver's license in [95] the glove compartment.

Mr. Campbell: That is correct.

The Court: Well, if you drive an automobile, you are supposed to have your driver's license with you.

Mr. Jacobson: I agree. I think it shows that he was driving the automobile.

The Court: And all the testimony so far has been that he drove the automobile.

(Testimony of Arthur Katayama.)

Mr. Campbell: No question about that.

The Court: All right. Any other questions?

Mr. Campbell: That is another bit that we are saving.

Q. (By Mr. Jacobson): Were you in Judge Hall's courtroom on July 18, 1957? A. I was.

Q. Did you see Mr. Nocita there on that date?

A. Yes, sir.

Q. Did you hear the proceedings that took place on that date? A. Yes, sir. [96]

* * *

Cross-Examination

By Mr. Campbell:

Q. Mr. Katayama, as I understand you, prior to the 24th day of November, the time that Mr. Nocita was placed in detention and then arrest, the only time that you saw him was on November 20th, some four days previously; is that correct?

A. At or about 6:00 p.m.

Q. You said that was the first time you ever saw him in your life?

A. Yes, sir, to the best of my recollection.

Q. What is that?

A. To the best of my recollection.

Q. Yes, I understand. And you say on that occasion you saw him driving a Ford Thunderbird for a few blocks; is that right? A. Yes, sir.

Q. And then you lost him? A. Yes, sir.

Q. During the period that you had him under observation, did you observe was anyone with

(Testimony of Arthur Katayama.)

him? [97] A. No, sir.

Q. He was alone in the car at all times?

A. Yes, sir.

Q. Did he stop and get out of the car at any time that you had his car under observation?

A. Sir, he stopped.

Q. Did he get out?

A. For a traffic light, but he did not get out of the car.

Q. Did anyone approach the car, on foot or otherwise? A. No, sir.

Mr. Campbell: That is all.

Mr. Jacobson: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. Comstock, will you take the stand, please?

EDWIN WALKER COMSTOCK

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Edwin Walker Comstock. [98]

Direct Examination

By Mr. Jacobson:

Q. Mr. Comstock, what is your occupation?

A. Printing and publishing.

Q. How long have you been engaged in that

(Testimony of Edwin Walker Comstock.)

business? A. A lifetime.

Q. And where is the address of your establishment?

A. 1503 East Olive in Compton.

Mr. Campbell: I couldn't get that address.

The Witness: 1503 East Olive in Compton.

Q. (By Mr. Jacobson): Do you recognize this gentleman at the end of the counsel table?

A. Yes, I do.

Q. You now know from what you have heard in the court that his name is Roland Nocita. Did he ever come to you representing to be another person?

Mr. Campbell: Now, just a minute.

The Witness: I knew him as Fred at one time.

Q. (By Mr. Jacobson): But you recognize him—— A. Yes, I do.

Q. ——as this Fred? A. Yes.

The Court: Fred who?

The Witness: Fred, that's all I knew him as.

Q. (By Mr. Jacobson): When he came to you known as [99] Fred, what did he want?

Mr. Campbell: Your Honor, just a minute. I will object to that, if the court please, until some foundation is laid for this as to time, place, and persons present.

Q. (By Mr. Jacobson): Approximately when was the first time when he came to you as Fred?

A. Oh, I imagine the first week in September.

The Court: Of what year?

The Witness: '56.

Q. (By Mr. Jacobson): Was there anyone else present besides you and he?

(Testimony of Edwin Walker Comstock.)

A. At that time I don't think so.

Q. Did he come to you on business?

A. Yes, sir. [100]

* * *

Mr. Jacobson: Will you mark this, please?

The Clerk: Government's 11, for identification.

(The document referred to was marked Government's Exhibit 11, for identification.)

Q. (By Mr. Jacobson): I show you Government's 11 for identification and ask you if you have ever seen cards like that? A. Yes, sir.

Q. Did you print them?

A. Yes, I did. [102]

* * *

Mr. Jacobson: The Government will call Mr. Rudolph Vincelli.

RUDOLPH F. VINCELLI

called as a witness on behalf of the libelant, having been first duly sworn, was examined as testified as follows:

The Clerk: Will you take the stand, please, and state your name?

The Witness: Rudolph F. Vincelli, [104] V-i-n-c-e-l-l-i.

Direct Examination

By Mr. Jacobson:

Q. Mr. Vincelli, what is your occupation?

A. I am an owner of a cocktail bar.

(Testimony of Rudolph F. Vincelli.)

Q. Do you know Mr. Roland Nocita?

A. I do.

Q. Were you ever an agent for Mr. Nocita in the bookmaking business? A. I was.

Q. Did you also personally bet with Mr. Nocita?

A. I did.

The Court: Just a minute. Now, before we leave this, let's get something straight. You say you were an agent in the bookmaking business?

The Witness: Yes, sir.

The Court: When?

The Witness: Up until the time I got pinched, I guess.

Mr. Campbell: I can't hear you.

The Court: Will you keep your voice up? What year?

The Witness: The last year, 1956.

The Court: What time in 1956?

The Witness: I think it was——

The Court: Keep your voice up. They have a right to hear you.

The Witness: November, at 6:30 at night, in the evening. [105]

Mr. Campbell: Will the reporter read the previous answers, please?

(The record was read.)

Mr. Jacobson: I think he referred to the pinch——

Mr. Campbell: Let the witness explain.

Q. (By Mr. Jacobson): Now, you were work-

(Testimony of Rudolph F. Vincelli.)

ing in the capacity of an agent for Mr. Nocita in the month of November, 1956? A. Yes, sir.

Q. Now, do you recall Mr. Nocita making collections from you?

The Court: Now, counsel, just before we leave this, let's find out what is meant by "agent." You know everybody does not agree as to what an agent is, and I think this witness ought to testify as to what he did rather than testify that he was an agent.

Mr. Jacobson: All right. Let me rephrase the question.

Q. By "agent," did you work for Mr. Nocita in the business of accepting bets for him?

Mr. Campbell: I suggest the witness should testify to what he did.

The Court: I think the suggestion is good. Let the witness testify as to what he did.

Q. (By Mr. Jacobson): What did you do for Mr. Nocita?

A Well, I took wagering bets and turned them into [106] him and got a percentage.

The Court: Now, what do you mean? You mean people came in and placed wagers with you?

The Witness: Yes, sir.

The Court: And you turned them over to Mr. Nocita?

The Witness: That's right.

The Court: And what happened if these people won?

(Testimony of Rudolph F. Vincelli.)

The Witness: Well, in turn, he would give me the money to pay these people off.

The Court: And you would pay them off?

The Witness: That's right.

The Court: When you collected these bets, did you collect the money?

The Witness: I did.

The Court: And then you would take the bets and the money and turn it over to Mr. Nocita?

The Witness: Yes.

The Court: When did you do this?

The Witness: Well, during the month of November.

The Court: There are a lot of days in the month of November, and a lot of minutes in the day. Can you tell us when this was done? Was this done every day?

The Witness: No, sir. You see, I had—you mean, when I come in contact with him personally?

The Court: Yes. [107]

The Witness: Well, just on one occasion; one evening he came to my place.

The Court: On one occasion?

The Witness: Yes.

The Court: When was that?

The Witness: In November.

The Court: In November. Do you remember what time in November?

The Witness: Well, I don't know. I think it was during the—it was about the second week in November.

(Testimony of Rudolph F. Vincelli.)

The Court: And you met him only on one occasion?

The Witness: Yes, personally. Of course, otherwise most of the contact was done by telephone.

The Court: You say he came to your place of business?

The Witness: Yes, sir.

The Court: Do you remember about when it was in November?

The Witness: Well, I don't know. I think it was about the second week in November.

The Court: The second week. How did he come? Did he walk or ride?

The Witness: Well, he rode.

The Court: What kind of a car was he in?

The Witness: He was in a black Thunderbird.

The Court: Do you know what year it [108] was?

The Witness: Well, it was a new car.

The Court: That is all you know, that it was a new car?

The Witness: A new car. You see, I don't drive, and I don't know.

The Court: And this is the only time you saw him?

The Witness: Yes, sir.

The Court: And this is the only time you saw him drive a Thunderbird?

The Witness: Yes, sir.

The Court: On this occasion what did he do or what did you do?

(Testimony of Rudolph F. Vincelli.)

The Witness: Well, I paid him off on some wagering bets.

The Court: What do you mean? You mean you paid him some money?

The Witness: Yes.

The Court: In other words, he came in to collect some money from you?

The Witness: Yes, sir.

The Court: And you paid it?

The Witness: Yes, sir.

The Court: And then he left?

The Witness: Yes, sir.

The Court: And this money was due from wagering; is that right?

The Witness: Yes, sir. [109]

Mr. Jacobson: No further questions. Oh, I have one other question.

Q. At the time you just referred to, when he came to make his collections, did he give you any bets at that time—any further action?

A. Did he give me?

Q. Yes? A. No, sir.

Q. Did you give him any further action?

A. No, not that night.

Mr. Jacobson: No further questions.

(Testimony of Rudolph F. Vincelli.)

Cross-Examination

By Mr. Campbell:

Q. Let me get this straight, Mr. Vincelli: You say you were an agent for Mr. Nocita, but you had only seen him one time?

A. Well, one time so far as money transaction is concerned. [110]

* * *

Q. (By Mr. Campbell): Just confine yourself, if you can, Mr. Vincelli, to the questions I ask you. Now, let me see. You say that this took place—strike that.

You say that you were his agent up until 6:30 some night in November; is that right?

A. Well, that's right.

Q. What do you mean by that?

A. Well, for the simple reason after I got arrested that I wasn't his agent no more.

Q. After you were arrested? A. Yes.

Q. When were you arrested?

A. I don't know exactly the date. It was in November. I don't remember exactly the date. I know it was a Friday night.

Q. It was in the early part of November, wasn't it?

A. No, no. I would say it was better than the middle part of November, that is——

Q. Well, would you say it was before or after the 15th?

A. I would say it was after the 15th.

(Testimony of Rudolph F. Vincelli.)

Q. Was it before or after the 17th?

A. That I couldn't—that I don't know.

Q. By the way, who arrested you?

Mr. Jacobson: I will object to that as being immaterial. [111]

The Court: Overruled.

The Witness: Well, Mr.—I can't pronounce his name.

Q. (By Mr. Campbell): Mr. Crabtree?

A. No, sir.

Q. Mr. Katayama? A. Yes, sir.

Q. That appeared here on the stand?

A. Yes, I seen him appear on the stand.

Q. Mr. Donley? A. No, sir.

* * *

Q. (By Mr. Campbell): Was any agreement entered into between you and any agent or representative of the Government that you would not be prosecuted in the event you appeared and testified in this matter? [112]

Mr. Jacobson: I will object to the question.

The Court: Overruled. You may answer that "Yes" or "No."

The Witness: No, sir.

Q. (By Mr. Campbell): Subsequent to your arrest were any proceedings filed in this court against you?

A. I don't understand. I don't get it.

The Court: You don't understand the meaning of the word "proceedings"?

Mr. Campbell: What was that?

(Testimony of Rudolph F. Vincelli.)

The Court: You don't understand the meaning of the word "proceedings"?

The Witness: No, sir, I don't.

* * *

Q. Now, you say you do not drive an automobile yourself? A. No, sir.

Q. Where is your place of business?

A. 8218 Long Beach Boulevard, South Gate.

Q. What cross street is that at? [113]

A. What cross street?

Q. I mean, what principal boulevard?

A. Near Santa Ana.

Q. The Freeway?

A. No, Santa Ana Street.

Q. Santa Ana Street, all right. What time of day was it that Mr. Nocita came to your place of business? A. He came in the evening.

Q. Was it after dark?

A. Yes, it was after dark.

Q. Did he come into your place?

A. Yes, sir.

Q. That was the first time that you saw him, that he was in your place?

A. Oh, no, he has been in my place before.

Q. No. On that occasion did you see him arrive—did you see him outside the door of your place before he came in?

A. No, I didn't see him outside my place before he came in.

Q. So the first time you saw him on that occasion, he was already in your place of business;

(Testimony of Rudolph F. Vincelli.)

is that correct? A. That's right.

Q. Did you see him leave that evening?

A. Yes, sir. [114]

Q. Where were you when he left?

A. I was with him. I walked to the rear with him.

Q. You walked to the rear?

A. I walked to the rear, to the exit. I got two. I call it the rear.

Q. Did you go outside of the place of business on that occasion?

A. Well, I walked right to the door.

Q. And did you see him get into an automobile on that occasion? A. Yes.

Q. You are familiar, of course, with the various makes of automobiles?

A. Not too familiar.

Q. But you know one car from another?

A. Well, because I was told.

Q. By whom? A. By Mr. Nocita.

Q. What was the conversation?

A. Well, I was fascinated by the automobile. I thought it was a foreign car.

Q. And what did you say?

A. So that is why he laughed, and told me what it was.

The Court: What did he tell you?

The Witness: He told me it was a [115] Thunderbird.

Q. (By Mr. Campbell): Did you observe the color of the car? A. Yes.

(Testimony of Rudolph F. Vincelli.)

Q. Did you observe whether it had more than one tone?

A. I didn't observe that much, no, sir.

Q. Did you observe the color, whether the upholstery was contrasting or a similar color to the outside of the car?

A. I didn't look on the inside.

Q. Did you observe the license plates?

A. No, sir.

Q. You have seen Mr. Nocita from time to time in various cars, have you not?

A. Yes, sir.

Q. Is this the only time you saw him in the car that you refer to as having seen on that occasion?

A. Yes, sir.

Q. You never saw that car before or since; is that right?

A. No, I haven't seen it. That was the first time I seen it, that time.

Q. And that was the last time you saw it?

A. That's right.

Q. Did you jot down, or do you recall the license number? [116]

A. No, sir.

Q. Did you observe whether it had a paper or a metal license place?

A. No, I did not.

Q. How much money did you pay to Mr. Nocita on that occasion?

Mr. Jacobson: I will object to that question as being immaterial.

The Court: Overruled.

The Witness: Oh, it was a few hundred dollars.

Q. (By Mr. Campbell): How much?

(Testimony of Rudolph F. Vincelli.)

A. I don't know how much. I forgot.

Q. Did you keep a record of it?

A. No, sir.

Q. Well, can you state whether it was 100 or 500?

A. I would say—well, I would say it was maybe two or three hundred.

Q. Is that your best recollection?

A. That's my best recollection.

Q. Do you have any record of any kind as to the payment of that money to him?

A. No, I don't have any record.

Q. Did you get a receipt from him?

A. No, sir.

Q. In what form did you pay him? [117]

A. In paper money.

Q. What denominations?

A. That I don't remember either.

Q. And you don't remember the amount?

A. I don't.

Q. And yet this was the only occasion on which Mr. Nocita ever came to your place of business for that purpose?

A. That's right.

Q. In what connection did you give him that money?

A. He had it coming.

Q. For what?

A. Well, for football bets.

Q. That he had made with you?

A. That I had made with him.

Q. You say you had made with him. Were those bets that had been made by customers of yours?

(Testimony of Rudolph F. Vincelli.)

A. That's right.

Q. What arrangement, if any, did you have as to your profits on such transactions?

A. 25 per cent.

Q. Had you taken your 25 per cent out of this money? A. Yes, sir.

Q. How much did you receive?

A. I still don't remember.

The Court: You were to get 25 per cent of the amount [118] bet?

The Witness: No, of what was won.

The Court: 25 per cent of the winnings?

The Witness: Yes.

* * *

Q. Was anybody with Mr. Nocita on this occasion? A. No, sir.

Q. Was anybody with you?

A. I was working.

Q. Well, was there anybody with you at the time you had this conversation with Mr. Nocita ?

A. There was people at the bar, but they didn't hear our conversation.

Q. Who was there?

A. Well, I don't remember.

Q. Were any of these agents who are in the courtroom present at that time?

A. No, sir. [119]

Q. Had you had a conversation with Mr. Nocita by telephone or otherwise prior to his arriving at your place on that occasion?

(Testimony of Rudolph F. Vincelli.)

A. Oh, I had a lot of conversations with him on the phone.

Q. What I mean to say is, was there an arrangement made that he was to be there on that occasion?

A. Yes, I knew that he was coming.

Q. Had he talked to you about coming?

A. Well, he notified me.

Q. He called you?

A. Yes, to let me know he was coming.

Q. Do I understand that you gave him some additional bets while he was there?

A. No, not that night I hadn't.

Q. You did not. All that was done on that occasion was that he picked up the winnings; is that correct?

A. The money transaction.

Q. His part of the winnings. Nothing else was done?

A. No.

Q. No additional bets were placed?

A. No, not that night.

Mr. Campbell: I think that is all.

The Court: Any further questions?

Mr. Jacobson: No other questions. [120]

* * *

Mr. Campbell: Pardon me, Mr. Jacobson. I have a further question I would like to ask of Mr. Katayama on cross-examination, if that will meet with the convenience of the court.

The Court: All right. Bring him back and let's get the question.

ARTHUR KATAYAMA

called as a witness on behalf of the libelant, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Campbell:

Q. Mr. Katayama, in connection with the Thunderbird [121] which was seized, did you take the speedometer mileage? A. I did, sir.

Q. And what was that speedometer mileage?

A. To the best of my recollection, it was 1,158 miles.

Q. Was that at the time of the seizure, or when you looked at it two days later?

A. When I looked at it two days later.

Q. So that, at least, after the seizure it had been driven to the place of storage?

A. I can tell you exactly what happened.

Q. At any rate, when you looked at it two days later, it was not on the street, it was then at a storage place and not at the place where the seizure was made? A. That is correct.

Q. Did you also ascertain the date of the purchase of that car? A. Yes, sir.

Q. What date had it been purchased?

A. November 2, 1956.

Q. November 2nd, and the seizure was on November 24th? A. Yes, sir.

Mr. Campbell: Thank you, sir.

(Testimony of Arthur Katayama.)

Redirect Examination

By Mr. Jacobson:

Q. Then on the 26th there was 1,150 miles on that car, [122] approximately?

A. To the best of my knowledge, 1,138 miles.

The Court: Oh, 1,138.

Mr. Campbell: Pardon me. Let me ask a further question.

Recross-Examination

By Mr. Campbell:

Q. Are you acquainted with the location where the Nocitas live?

Mr. Jacobson: I will object to that question. There has been no evidence as to where the Nocitas live.

The Court: Overruled.

The Witness: I know the number of the location where Mr. Nocita is supposed to live.

Q. (By Mr. Campbell): And that location is approximately 25 miles from the place where the car was seized at the place of business?

A. I do not know the exact mileage to the place of business.

Q. Would you say that was about accurate?

The Court: Was it in Garden Grove?

The Witness: Yes.

The Court: The Court knows where Garden Grove is. I have been to Garden Grove for a long

(Testimony of Arthur Katayama.)

time, but Garden Grove now stretches all over the western part of Orange County. [123]

Mr. Campbell: I forgot that your Honor was from Orange County.

The Court: What part of Garden Grove is that in?

The Witness: It was in the outskirts of Garden Grove, let's say closer to Long Beach, your Honor.

The Court: Nearer to Long Beach. Over near 39?

The Witness: Yes, sir.

Mr. Campbell: Thank you. That is all.

The Witness: You are speaking of Highway 39, your Honor?

The Court: Highway 39, yes.

(Witness excused.)

Mr. Jacobson: Mr. Dosmann.

CHARLES M. DOSMANN

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand, please, and state your name, sir?

The Witness: Charles M. Dosmann, D-o-s-m-a-n-n.

Direct Examination

By Mr. Jacobson:

Q. Mr. Dosmann, what is your occupation?

A. I am office manager for a Ford dealership.

(Testimony of Charles M. Dosmann.)

Q. What dealership is that? [124]

A. Ben Barkley Motors.

Q. Where is that located?

A. At 1050 East Slauson Avenue, Los Angeles.

Q. Pursuant to a subpoena served on you, did you bring in the records relating to the sale of a 1957 Thunderbird? A. I did.

Q. Do you have those records with you?

Mr. Campbell: I will stipulate that any pertinent ones may be received without any further foundation or examination.

Mr. Jacobson: Thank you.

Mr. Campbell: As a part of the official records of Ben Barkley Motors. You can just identify the ones you put in.

Q. (By Mr. Jacobson): Would you please show me the sales contract on this?

A. I presume you mean the purchase order.

Q. Yes, the purchase order. That is just what I mean. A. That is this item (indicating).

Q. This is the CIT?

A. That is the confidential customer's statement, yes.

Mr. Campbell: I can't hear you, Mr. Dosmann.

The Witness: That is the customer's confidential statement.

Q. (By Mr. Jacobson): Now, can you tell me from your records here what paper license plate was issued to that [125] Thunderbird?

A. Let's see. I don't know whether I have that in here or not. We don't keep that except in the——

(Testimony of Charles M. Dosmann.)

The Court: May I inquire what is the date of the purchase? When was it purchased?

The Witness: November 2, 1956.

The Court: And who purchased it?

The Witness: Anna Valetta Ewing.

The Court: Did you deal with Mrs. Ewing, or did you deal with somebody else, or do you know?

The Witness: Well, that I don't know. They deal with the sales department before they come to me.

The Court: You didn't sell this car personally?

The Witness: No, your Honor.

The Court: And you didn't talk to anybody about the purchase of the car?

The Witness: Only to Universal, to check the credit statement.

The Court: You didn't talk to Mr. Nocita or Mrs. Nocita, did you?

The Witness: No, your Honor.

Q. (By Mr. Jacobson): This is a dealer's report of sale and application for registration. Can you tell us what the paper license number is from that?

A. Yes, I can. I have it here anyway. I found it. [126] It is 0573243.

Q. Also, here in your records there is what is called a repair order, office copy, No. 6370. What is that for?

A. That is for a 1,000-mile service.

Q. On what car?

A. On the 1957 Thunderbird.

Q. Now, in November of 1956 it was possible to

(Testimony of Charles M. Dosmann.)

buy a 1957 Thunderbird? A. Yes.

Q. Oh, that is the speedometer number, 1,120?

A. Yes.

Mr. Jacobson: I will offer this repair order into evidence.

The Court: It is a part of the official records of this business, and I don't know why it is material. What are you trying to establish here?

Mr. Jacobson: The mileage on the car.

The Court: You have already got a statement here that it had 1,138 miles on it.

Mr. Campbell: Can't he testify as to the date of the speedometer reading?

Mr. Jacobson: Yes, he can. Let's do it that way.

Q. On that day what was the speedometer reading—on the date this repair order was given?

A. The date is 11-23, and the mileage is 1,120 miles. [127]

Q. Can you tell if at the same time another car was purchased by the same purchaser?

A. There was another car purchased, yes.

Q. What car was that?

A. That was a Fairlane Ford club sedan.

Q. Then, as far as your records show, the same alleged purchaser, Anna Valetta Ewing, bought two cars on that date?

* * *

The Witness: The same purchaser purchased both cars.

Mr. Jacobson: Thank you. No further questions.

(Testimony of Charles M. Dosmann.)

The Court: Any questions?

Mr. Campbell: No questions.

The Court: May the witness be excused?

Mr. Campbell: Yes, sir.

The Court: You may be excused.

Mr. Jacobson: Oh, just one further thing, your Honor.

I would like to introduce in evidence the CIT—where is the CIT credit information?

The Witness: The credit information, that is this item right here (indicating).

The Court: Have you got a photostatic copy of it?

Mr. Jacobson: Yes, I do. Will you stipulate that a photostat may go in, Mr. Campbell?

Mr. Campbell: Not that it can go in. [128]

Mr. Jacobson: But if it goes in——

Mr. Campbell: But if it does go in, no objection to a photostat——

Mr. Jacobson: ——being used.

The Court: Let me see the original, will you?

(Thereupon, a document was handed to the court.)

The Witness: The original statement?

The Court: Yes, the original statement.

The Witness: Well, the original the finance company has.

The Court: Don't talk unless you can talk loud enough for everybody to hear you.

(Testimony of Charles M. Dosmann.)

The Witness: The finance company has the original.

Mr. Jacobson: May I have this one marked?

Mr. Campbell: I have no objection to its going into evidence.

Mr. Jacobson: I will offer it, then.

The Court: It may be received into evidence.

The Clerk: Government's Exhibit 12.

(The document referred to was marked Government's Exhibit 12 and received in evidence.)

Q. (By Mr. Jacobson): All right. Now, I show you Government's Exhibit 12 in evidence, and ask you is this the type of form that a person applying for credit to purchase an automobile fills out? [129]

A. Yes.

Q. Is there an occupation usually listed on that?

A. Yes, there is.

* * *

Mr. Jacobson: I will call Mr. Arthur Higginson.

ARTHUR HIGGINSON

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Arthur Higginson.

The Clerk: Arthur Higginson.

Mr. Campbell: Will you repeat that?

The Clerk: Arthur Higginson. [130]

(Testimony of Arthur Higginson.)

Direct Examination

By Mr. Jacobson:

Q. Now, Mr. Higginson, what is your occupation? A. Stevedore.

Mr. Campbell: I can't hear you.

The Court: Keep your voice up.

The Witness: Stevedore.

Q. (By Mr. Jacobson): Whom do you work for? A. Pacific Maritime Association.

Q. Pacific Maritime Association?

The Court: Just a minute. You are a stevedore?

The Witness: Yes, sir.

The Court: So you work outdoors?

The Witness: Yes, sir.

The Court: Can't you keep your voice up so that people can hear you? You wouldn't talk that way out on the dock, would you?

The Witness: No, sir.

The Court: All right. Now, you talk here like you do on the dock, and let us hear you.

Mr. Campbell: The same language, your Honor?

The Witness: Not the same language.

The Court: All right. You keep your voice up.

Q. (By Mr. Jacobson): Was that the Pacific Maritime Association? [131]

A. Yes, Pacific Maritime Association.

Q. Now, do you recognize this man sitting at the end of the counsel table?

A. Yes, I recognize him.

(Testimony of Arthur Higginson.)

Q. What is his name?

A. I don't know his name.

Q. Is that the person that we have been——

Mr. Jacobson: Will you stipulate?

Mr. Campbell: We will admit that he recognizes him.

Q. (By Mr. Jacobson): Now, on November 24th—I refer you to November 24, 1956. Let me strike that last question.

Now, Mr. Higginson, let me show you a check, Government's Exhibit 7 in evidence, and ask you if that is a photostat of one of your paychecks?

A. It is.

Q. And this is your signature?

A. Yes, that's my signature.

* * *

Q. (By Mr. Jacobson: Would you say that was your signature, Mr. Higginson?

A. That is my signature .

The Court: Is that your check? [132]

The Witness: That is my check. That is a photostat of my check.

Q. (By Mr. Jacobson): Do you know who cashed that check for you?

A. Roland cashed it for me.

Q. Did this gentleman cash it?

The Court: He said, "Roland."

Q. (By Mr. Jacobson): Roland? A. Yes.

Q. By "Roland," you mean this gentleman (indicating)? A. Yes, that's right.

(Testimony of Arthur Higginson.)

Q. Where did you cash it?

The Court: Wait a minute. You say he cashed the check for you?

The Witness: He cashed the check for me.

The Court: That is, he took the check and gave you the money?

The Witness: That's right.

The Court: When?

The Witness: This particular day. This check is the 11-19, in 1956, which would be November.

The Court: Let me see the check.

(The document was handed to the Court.)

The Court: Where was this check cashed?

The Witness: He cashed it. [133]

The Court: Where?

The Witness: Where did he cash it?

The Court: No, where did you give it to him?

Q. (By Mr. Jacobson): Where were you when you gave it to him to have it cashed?

A. At the Smoke Shop.

Q. At the Smoke Shop? A. Yes.

* * *

The Court: * * * You say this check was cashed at the Smoke Shop?

The Witness: Yes.

The Court: Did you just go in and just ask him to cash the check?

The Witness: Yes, I went in and asked him to cash the check.

The Court: And he gave you the money, did he?

(Testimony of Arthur Higginson.)

The Witness: Yes, he gave me the money. [134]

Q. (By Mr. Jacobson): Do you remember what day this was? By that I mean, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday?

A. Oh, Friday.

Q. Also, what did this man call you?

A. A. H.

Q. At the time he cashed the check for you, did you settle with him on some bets you had made with him

* * *

A. Yes.

Q. And you did so with the money you received from this check; is that correct?

A. Yes, sir, I did.

The Court: Now, let me get this straight, and let me understand. You gave him the check, and got the money; is that right?

The Witness: That's right.

The Court: And then you paid some bets; is that right?

The Witness: I paid him some I owed him.

The Court: How much was it?

The Witness: Oh, approximately \$10.00, I imagine.

The Court: \$10.00?

The Witness: Yes. [135]

The Court: And when had you made those bets?

The Witness: Oh, approximately a day or two before that.

The Court: A day or two before?

(Testimony of Arthur Higginson.)

The Witness: Yes.

The Court: And what were the bets made on?

The Witness: Horses.

The Court: Horses?

The Witness: Yes.

Q. (By Mr. Jacobson): Did you also make some further bets with him at that time?

A. No, no more bets.

Q. And this was at the Smoke Shop, you say?

A. Yes, this was at the Smoke Shop.

Q. Do you know the address of the Smoke Shop?

A. No, I don't.

Q. Is it on Central Avenue?

A. It is on Central Avenue.

Q. Approximately what block?

A. I wouldn't know the exact block.

Q. Well, would it be a fair statement to say it was about the 6800 block?

A. Well, I heard them here talking, but I was thinking it was about the 6600 block.

Q. But around in that neighborhood?

A. Yes. [136]

Mr. Jacobson: No further questions. Oh, just one or two questions.

The Court: Just a minute. Let me find out something for myself. You say this was on a Friday?

The Witness: Friday, I am positive of that.

The Court: Is it stipulated that November 24th is on a Friday?

Mr. Campbell: A Saturday, your Honor.

Mr. Jacobson: I think it was on Saturday.

(Testimony of Arthur Higginson.)

The Court: But you are sure it was on Friday?

The Witness: I am not sure that it was if you say it was on Saturday. Some paydays is on Friday, and some is on Saturday. I couldn't say for sure, but usually Friday is payday.

Mr. Campbell: Friday is payday?

The Witness: Friday is payday, but if a holiday falls on any of the days through the week, it is on Saturday.

Q. (By Mr. Jacobson): So you could have cashed that check with him on Saturday?

Mr. Campbell: I object to that.

The Court: Just a minute. Let me try to find something out, if I can. This may be important. I don't know whether it is or not.

Mr. Jacobson: Your Honor, I think your Honor can take judicial notice of what date Thanksgiving was on that year. [137]

The Court: November 24th is on a Saturday. November 24th is on a Saturday.

The Witness: Then possibly I could have cashed the check on a Saturday.

The Court: And you don't know whether you got it on Friday or on Saturday?

The Witness: No, I don't know that for sure.

The Court: Do you remember what time it was when you cashed the check?

The Witness: No, I don't.

The Court: Was it in the afternoon?

The Witness: I couldn't say.

The Court: You don't know whether it was in

(Testimony of Arthur Higginson.)

the evening, around supper time, or early in the morning?

The Witness: Oh, not no supper time. Supper time I am back for another job.

The Court: What time do you go to work?

The Witness: I go to work at 7:00 o'clock.

The Court: Do you work on Saturdays?

The Witness: Saturdays, Sundays, every day.

The Court: You don't remember what time of day it was when you went into this Smoke Shop?

The Witness: No, I don't remember what time it was.

The Court: So you don't know whether he cashed the check on Friday or Saturday? [138]

The Witness: No, I couldn't say.

The Court: Well, according to the check, it was for the week ending the 19th of November?

The Witness: The 19th of November.

The Court: The 19th of November is on a Monday.

The Witness: On a Monday, that's right. Time goes in Sunday night.

The Court: Do you remember when you get your checks? Did you get them on Friday or Saturday?

The Witness: Friday or Saturday.

The Court: Friday or Saturday?

The Witness: Or Saturday. If there is a holiday through the week, you get your check on Saturday. If there is not, you get it each Friday morning?

Mr. Jacobson: I think the court can take judicial notice Thanksgiving fell in that week.

(Testimony of Arthur Higginson.)

The Court: Then are you willing to stipulate the check was delivered on Saturday?

Mr. Jacobson: Yes, I am your Honor. Are you, Mr. Campbell?

Mr. Campbell: I don't know. I won't stipulate to something I don't know.

The Court: Well, if Thanksgiving was in that week, then you got paid on a Saturday?

The Witness: Thanksgiving was on the [139] 29th?

The Court: Thanksgiving was on the 22nd.

The Witness: Thanksgiving was on the 22nd. All right, I got paid on the 24th.

The Court: You got paid on the 24th. Saturday?

The Witness: Saturday.

The Court: What time did you get paid in the morning?

The Witness: The pay office is open at 6:00 o'clock in the morning, and is closed at 7:00 at night, 7:00 p.m. That is all day long.

Mr. Jacobson: I have no further questions.

Cross-Examination

By Mr. Campbell:

Q. What time did you get your check on that day?

A. Well, I couldn't say for sure what time.

Q. Well, what time do you customarily get your check?

A. Well, sometimes I wait until 6:00 o'clock. Sometimes I go and get it at 7:00 in the evening.

(Testimony of Arthur Higginson.)

Q. Would you say you got it at 6:00 o'clock on this occasion?

A. Oh, it's a possibility. What size check was it?

The Court: \$167.40.

The Witness: I probably got it early that morning.

Q. (By Mr. Campbell): What time of day did you cash it? [140]

A. Well, I would say somewhere around noon, something like that. Usually whenever I pick up a check, I go in and take a nap, and then wake up later. You see, I work nights.

Q. Usually you cash them at night?

A. I say I work nights. I go in and go to sleep, and get up about 12:00 or 1:00 o'clock during the day.

Q. I see.

A. But what particular time this was, I couldn't say.

Q. Your transactions were all carried on in the Smoke Shop; is that right?

A. All of my transactions?

Q. With Mr. Nocita here?

A. Well, in the front in the Smoke Shop, there in the front there where he cashed the check.

Q. Yes. That is where the cigar stand and the magazine stand, and so on, is? A. Yes.

Q. When he cashes your checks there, why, he gets the money out of the cash register, doesn't he?

A. I don't pay no attention where he got the money from.

(Testimony of Arthur Higginson.)

Q. I see. But you made it a practice of cashing your checks there; is that right?

A. That's the only check I cashed with [141] him.

Q. But, at any rate, you went in on whatever occasion it was, or whatever day it was that you had this check, and asked him to cash the check for you?

A. Yes, I asked him to cash the check for me.

Q. Which he did? A. Which he did.

Q. And after he cashed it you paid him the sum of \$10.00, or some such sum, which you owed him?

A. Yes, approximately \$10.00. I don't know exactly what it was.

Q. That was the result of some wagering you had made with him sometime before?

A. Yes, sir, sometime before.

Q. Where had you made the wagers when you made them before? A. At the Smoke Shop.

Q. Inside the Smoke Shop? A. Yes.

Q. So that the transaction of making the wager and the transaction of paying the wager with Mr. Nocita were both inside the Smoke Shop; is that correct? A. That's correct.

Mr. Campbell: That is all.

Mr. Jacobson: That is all.

The Court: May this witness be excused? [142]

Mr. Campbell: Yes, sir.

The Court: You may be excused.

* * *

JAMES B. JOHNSON

called as a witness on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: James B. Johnson, J-o-h-n-s-o-n.

Direct Examination

By Mr. Jacobson:

Q. Mr. Johnson, what is your occupation?

A. Deputy Sheriff attached to the Los Angeles County [143] Vice Detail.

Q. The Vice Detail? Is that the detail that investigates bookmaking? A. Yes, it is.

Q. I direct your attention to November 24th, and ask you if you ever saw——

Mr. Campbell: He stepped out. I will stipulate that he saw Mr. Nocita there.

The Witness: Yes, I saw Mr. Nocita on November the 24th.

Q. (By Mr. Jacobson): Were you the sheriff that apprehended Mr. Nocita?

A. Yes, I was the first man to reach Mr. Nocita. However, I had in my company Special Agent Crabtree and Deputy Sheriff Gil Shulton.

Q. Now, Officer Johnson, exactly where did you first spot Mr. Nocita that evening?

* * *

The Witness: I first seen Mr. Nocita come out of the Smoke Shop at 6717 Central, and start to walk across the street.

(Testimony of James B. Johnson.)

Q. (By Mr. Jacobson): Was a black Thunderbird parked [144] across the street?

A. Yes, it was.

Q. Then what did you see Mr. Nocita do next?

A. He hesitated and stepped back onto the sidewalk and started to walk north on Central Avenue.

Q. And then what happened?

A. I recognized him. Deputy Shulton recognized him.

Mr. Campbell: I ask that last be stricken.

The Court: That last may go out. The question is not what you recognized. What happened?

The Witness: I left the car I was sitting in and started across the street.

Q. (By Mr. Jacobson): Then what did you do?

A. I encountered Mr. Nocita in the alley of 68th Street and Central.

Q. Did you actually apprehend him, then?

A. I told the man he was under arrest on the strength of a Federal warrant.

Mr. Campbell: May I have the last answer read?

(The answer was read.)

Q. (By Mr. Jacobson): What did he say?

* * *

The Witness: Mr. Nocita said, "Don't touch me until I [145] see the warrant."

Q. (By Mr. Jacobson): Then what?

A. At that time he put his hand into his pocket. I demanded he take it out, and I retrieved from him

(Testimony of James B. Johnson.)

a metal cylinder from his right hand, which he had coiled in his hand.

Q. Did you have any further conversation with him at that time? A. Yes, I did.

Q. Will you relate that to us?

A. I told Mr. Nocita to come across the street before he started to ride. At that time myself, Federal Agent Crabtree, and Deputy Shulton accompanied Mr. Nocita across the street.

Q. Did he say anything?

A. As we were walking across the street, he said, "I want you to take care of that car, it's mine," and pointed towards the black and white Thunderbird.

I said, "You mean the Thunderbird?"

He said, "Yes."

At that time I said, "Why did you start to walk towards your car, and then take off?"

He said, "I came outside and saw you guys staked on the car."

Mr. Jacobson: No further questions. [146]

Cross-Examination

By Mr. Campbell:

Q. How long had you been outside the Smoke Shop on that occasion?

A. I had been outside of the Smoke Shop from 12:00 noon.

Q. From 12:00 noon until 6:10? A. 6:05.

(Testimony of James B. Johnson.)

Q. 6:05. And that is the first time Mr. Nocita came outside; is that right?

A. That's correct.

Q. And when he did come outside and you saw him, you started after him, is that right—started after him afoot? A. Not immediately.

Q. Well, I take it——

A. When he stepped back onto the curb, then we started after him.

Q. All right. When you got up to him you said that he was under arrest by virtue of a Federal warrant—is that what you said?

A. That is correct.

Q. Had you seen any warrant?

A. I had seen a warrant, yes, sir.

Q. Where? [147]

A. I had seen a warrant in the hands of Arthur Katayama, U. S. Treasury Department.

Q. When?

* * *

The Witness: I had seen it earlier that day, approximately twenty minutes to maybe half an hour before the apprehension.

Q. (By Mr. Campbell): That would be, say, from 5:30 to 5:40 you saw it?

A. To the best of my recollection, yes.

Q. And where was it that you saw it?

A. Where?

Q. Yes.

A. It would be on Central Avenue, when I had a conversation with Arthur Katayama.

(Testimony of James B. Johnson.)

Q. Whereabouts on Central Avenue?

A. If I recall correctly, it would have been about 66th or 65th, beyond Central Avenue.

Q. Now, you say that when you told him he was under arrest, he had his hand in his pocket, and you told him to bring it out?

A. When I told him he was under arrest, he put his hand [148] in his pocket, and then I told him to bring it out.

Q. The metal cylinder that you referred to was a cigarette lighter, wasn't it?

A. It was a cigarette lighter, coiled in his hand.

Q. Coiled in his hand—how was it coiled in his hand?

A. Well, he had his fist wrapped around it.

Q. By his fist, you mean he had his hand closed on a cigarette lighter when he pulled it out of his pocket?

A. The cigarette lighter is a Ford car cigarette lighter, an oblong cylinder.

Q. He had that in his hand?

A. That is correct.

Q. Had you shown him your badge?

A. I had.

Q. Prior to that? A. Absolutely.

Q. Did you have a gun in your hand?

A. Not to my recollection, no.

Q. Well you would recall if you had a gun in your hand, wouldn't you.

A. No, I don't believe that I did.

(Testimony of James B. Johnson.)

Q. But you were wearing a gun, though?

A. I always wear a gun.

Q. Were you in uniform? [149]

A. Never.

Q. Did you place him in handcuffs at that time? A. Not at that particular time, no.

Q. How soon afterwards did you place him in handcuffs?

A. Probably five minutes afterwards.

Q. At the time you placed him under arrest, where did you take him?

A. Directly across the street.

Q. To your car?

A. To Deputy Shulton's car.

Q. Did he get into the car willingly, that is to say, was he propelled in any way into that car?

A. When I got up to Deputy Shulton's car, I believe that Deputy Shulton and Carl Seltzer took the defendant at that time.

Q. And you turned away?

A. I believe I went back to the crowd across the street, which was starting to congregate.

Q. I see. So you don't know, then, of your own knowledge, whether or not any force was used at that time? A. No, I do not.

Q. Mr. Nocita, at the time you said you had a Federal warrant, or you were arresting him by virtue of a Federal warrant, said he wanted to see it; is that right?

A. He screamed at me and said, "Don't touch me until [150] I see the warrant."

(Testimony of James B. Johnson.)

Q. When you say he screamed, you mean he used a loud tone of voice?

A. Correct, enough to start a small congregation of people on Central Avenue.

Q. Did you touch him, then?

A. Absolutely.

Q. You laid your hands on him, didn't you?

A. I retrieved from his right hand the cigarette lighter in question.

Q. Did you search him at that time?

A. No, sir.

Q. During that entire course of time, from the time you had the place under observation from 12:00 o'clock noon on that day until the time you placed him under arrest, did you ever see Mr. Nocita either in or around the Ford Thunderbird?

A. No, sir.

Mr. Campbell: That is all.

Redirect Examination

By Mr. Jacobson:

Q. Referring to this Thunderbird, did you happen to notice the license number of that Thunderbird?

A. Yes, sir. [151]

Q. What was it?

A. It was a metal plate, MVY 377.

Q. Is this the car that you just testified about, that he pointed to and said, "That is my car"?

A. That is correct.

(Testimony of James B. Johnson.)

Mr. Jacobson: That is all.

The Court: Anything further?

(No response.)

The Court: You may step down.

Mr. Campbell: He may be excused so far as I am concerned.

(Witness excused.) [152]

* * *

Mr. Jacobson: Your Honor, at this time Mr. Campbell and I have a stipulation, which Mr. Campbell objects to the materiality of it, but we will stipulate on the facts; and that is that Mr. Nocita on the 18th day of July, 1957, was convicted upon his plea of guilty to two counts of an information No. 25844, Count One and Count Two, which I will have marked for identification.

The Court: You mean of the indictment there?

Mr. Jacobson: I have a copy of it.

The Court: What does it charge, the indictment?

Mr. Campbell: Failure to register and to obtain a stamp.

The Court: Who did you say this was?

Mr. Jacobson: Roland Nocita.

The Court: Not against the wife?

Mr. Jacobson: Not against the wife.

Mr. Campbell: I object to the materiality, your

Honor. But if the objection is overruled, I will stipulate to the fact.

The Court: I am going to overrule your objection in the light of the stipulation you have made. You have already [156] made a stipulation prior to the day in question the defendant had been engaged in the taking of wagers; and this is only corroborative of the stipulation you have entered into.

So, the objection will be overruled.

Mr. Campbell: I have made my objection, and I will stipulate that the fact is that he entered a plea of guilty to two counts of the indictment, which two counts will form an exhibit.

The Court: The indictment may be received and be marked as Government's Exhibit——

The Clerk: Exhibit No. 13. In evidence, your Honor?

The Court: In evidence.

Mr. Jacobson: Thank you, your Honor.

(The exhibits referred to, marked Libellant's Exhibit 13, was received in evidence.)

Mr. Jacobson: The Government will next call Mr. Barrett to the stand.

WALTER O. BARRETT

called as a witness on behalf of the libelant, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Walter O. Barrett.

Mr. Campbell: May I have that, Mr. Clerk?

The Clerk: Walter O. Barrett. [157]

Direct Examination

By Mr. Jacobson:

Q. Now, Mr. Barrett, what is your occupation?

A. I am a salesman and bartender. Right now I am employed as a bartender.

Q. Do you know a person by the name of Roland Nocita? A. I do.

Q. Do you see that person in this courtroom?

A. I do.

Q. Will you point him out?

Mr. Campbell: We will stipulate——

The Witness: The second man.

Q. (By Mr. Jacobson): Now, did you know Mr. Nocita during the month of November, 1956?

A. I did.

Q. Where did you reside at that time?

A. At 14651 South Lime.

Q. Lime Avenue?

A. Lime Avenue, right in the county. It is in Compton, I think.

Q. Is that address near the intersection of San Vicente and Lime Avenue?

A. That is correct.

(Testimony of Walter O. Barrett.)

Q. Did you share that apartment with anyone?

A. I did. [158]

Q. Who? A. Mr. Nocita.

Q. Did he pay part of the rent?

A. That is correct.

Q. To your knowledge did he use that address as a bookmaking spot?

Mr. Campbell: Pardon me. I object to the question in that form. It calls for his conclusion.

The Court: Sustained. It calls for the conclusion of the witness.

Q. (By Mr. Jacobson): What was your phone number at that address?

A. I would recognize it if I heard it.

Q. Does this sound right, NEvada 6-7892?

A. That's correct. I had maybe two phones there.

Q. Would the other one be NEvada 6-6321? Does that ring a bell?

A. It is possible, but I don't remember. I have heard the number but I don't remember if that was my previous number or not.

Q. Did you ever phone in bets to that [159] address?

* * *

The Court: "Phone in bets?"

Whose name is the telephone in?

The Witness: At one time the phone was in my name, and I don't know whether 6-7892 was in my name or wasn't in my name.

The Court: I think I am going to have to sustain the objection. I don't think the Government can

(Testimony of Walter O. Barrett.)

establish the fact that somebody telephoned in bets now. I think you are to lay a foundation as to who he talked to, and so forth.

* * *

The Court: * * * Where did you say the apartment was?

The Witness: 14651 South Lime in Compton.

The Court: Well, did you stay there?

The Witness: It was rented in my name, and I lived there, but I wasn't there very much. I was—my clothes were there, and I stayed there a couple of nights a week, maybe.

The Court: Did you use—— [160]

The Witness: But it was my apartment. I had it first.

The Court: Did you use the apartment for any reason other than living?

The Witness: Myself?

The Court: Yes.

The Witness: No, sir.

The Court: You were there very little of the time?

The Witness: In and out, mostly. I left at 8:00 in the morning. I get home at 10:00 at night when I stayed there. I have a friend in Long Beach that I visit.

The Court: When you weren't there you don't know what the apartment was used for, do you, of your own knowledge?

The Witness: Of my own knowledge, no.

(Testimony of Walter O. Barrett.)

Q. (By Mr. Jacobson): Did you accept bets for Mr. Nocita on football games, on these football wagering cards?

The Court: You can answer that yes or no.

The Witness: It's a hard question to answer yes or no. Mr. Nocita—it's difficult to say. I accepted football cards and I left them in my apartment. But I left at 8:00 in the morning. To say I got them—actually, I left them and I assume Mr. Nocita got them. But directly to hand them to him——

Mr. Campbell: I move to strike the portion starting with "I assume"——

The Court: It may go out. [161]

Let me ask this witness a question or two. Maybe I can help you out.

You say you took bets on football games?

The Witness: No. I bet my football card myself, or a few of the boys who worked with me, I took them and left them in the apartment.

The Court: In the apartment?

The Witness: Yes, sir.

The Court: You don't know who got them?

The Witness: Well, I know—what I mean I never directly handed them——

The Court: You just took them in and left them in the apartment?

The Witness: That is correct. I left a note with them and I know who got them, of my knowledge. I know who would get them. But directly hand them to him—I was gone at 8:00 in the morning.

(Testimony of Walter O. Barrett.)

The Court: Did any of your bets pan out? Did you win?

The Witness: I never did win. I can't pick those football games.

The Court: Nobody paid you any money?

The Witness: That's right.

The Court: So all you know now is that you had some football cards and you made selections and left the cards in the apartment? [162]

The Witness: That's right.

Q. (By Mr. Jacobson): Did you also have cards with selections made by some of your friends, and money wagers? Did you leave that in the apartment——

A. That's right.

Q. ——for someone to pick up?

The Court: May I inquire?

These cards left in the apartment, did you leave any money?

The Witness: That's right.

The Court: You left the money with the cards?

The Witness: That's correct.

Q. (By Mr. Jacobson): Now, this is the apartment at 14651 Lime Avenue, Compton?

A. That's correct.

Q. Did Mr. Nocita have a key to that apartment?

A. That's right.

Q. Who paid the majority of the rent?

A. We split it down the middle.

Mr. Jacobson: No more questions.

(Testimony of Walter O. Barrett.)

Cross-Examination

By Mr. Campbell:

Q. Mr. Barrett, Mr. Nocita didn't live in this apartment, did he?

A. I believe not, no. [163]

* * *

Q. (By Mr. Campbell): Did he have a home? To your knowledge is Garden Grove in Orange County? A. That's right.

Q. Now, you never saw Mr. Nocita pick up any of these tickets or money, did you, there in your apartment? A. No.

Q. As a matter of fact, you know, do you not, that somebody else used the apartment during the day? Do you know that? A. That's correct.

Mr. Jacobson: I didn't hear Mr. Campbell's last question.

The Court: Read the question.

(Record read.)

Q. (By Mr. Campbell): By "someone else," I refer to someone else other than Mr. Nocita. Is that correct? A. That's correct.

The Court: Well, include Mrs. Nocita, too. Does that include Mrs. Nocita?

The Witness: That's right. I don't know her.

Q. (By Mr. Campbell): Mrs. Nocita was not living there, either, was she? A. No. [164]

Q. Definitely not? A. No.

Mr. Campbell: That is all.

(Testimony of Walter O. Barrett.)

Redirect Examination

By Mr. Jacobson:

Q. Did you ever leave a note with any of the cards and the money?

Mr. Campbell: Yes or no.

The Court: Yes or no.

The Witness: Yes.

* * *

Q. (By Mr. Jacobson): Well, let me ask you this: You [165] don't really know whether Mrs. Nocita was ever at that apartment, do you?

A. I do not, no. To my knowledge she never was.

Mr. Jacobson: That is all.

Mr. Campbell: No further questions.

* * *

GILBERT E. SCHOLTEN

called as a witness on behalf of the libelant, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, sir?

The Witness: Gilbert E. Scholten, S-c-h-o-l-t-e-n.

Direct Examination

By Mr. Jacobson:

Q. What is your occupation?

A. Deputy sheriff, Los Angeles County, presently assigned to the vice detail.

(Testimony of Gilbert E. Scholten.)

Q. Is the vice detail the detail that investigates bookmaking activities? A. Yes, sir. [166]

Q. I refer you to November 20, 1956, and ask you if you saw Mr. Roland Nocita on that day?

A. Yes, sir; I did.

Q. Is this the Mr. Roland Nocita that you saw (indicating)? A. That's correct.

Q. Where did you see Mr. Nocita?

A. I first observed Mr. Nocita on that date at the corner of Cole Place and Long Beach Boulevard in the City of South Gate, California.

Q. Where was Mr. Nocita when you observed him on that occasion?

A. He was driving a 1957 Ford Thunderbird, the paper plate with the number 0572343.

Q. Did you follow him?

A. No, sir; I did not.

Q. Did you have occasion to see him again during the course of that day? A. Yes, sir; I did.

Q. Where?

A. That was at the corner of San Vicente and Lime Avenues, in Compton, California, approximately 10 or 15 minutes later.

Q. Was he in that same Thunderbird at that time? A. Part of the time, yes, sir. [167]

Q. Part of the time? A. Yes.

Q. Did he get out of the car?

A. Yes; he did.

Mr. Jacobson: No further questions.

The Court: Any questions?

Mr. Campbell: Was he alone?

(Testimony of Gilbert E. Scholten.)

The Witness: I believe he was. I am not sure.

Mr. Campbell: That is all.

The Court: You may step down.

(Witness excused.)

Mr. Jacobson: The Government rests, your Honor.

Mr. Campbell: If the Court please, I have certain motions to make at this time. And in that connection may I have about five minutes before I make them? I think I can organize them.

The Court: Yes. We can take our morning recess now.

Mr. Campbell: I believe it will be in the interest of time.

(Short recess.)

Mr. Campbell: Shall I proceed, your Honor?

The Court: Yes, you can proceed.

Mr. Campbell: At this time I wish to move to dismiss each of the libels which have been brought here by the Government, both on the basis that they are not supported by law and, secondly, that they have not been supported by the evidence [168] produced here before this Court.

To address myself to the second proposition first, as to the sufficiency of the evidence——

The Court: Now, I don't think, counsel, that you have to discuss the evidence, because I have heard the testimony of the witnesses and I know what they have testified to.

And, also, I might call your attention to the fact that the Circuit doesn't look with favor upon a granting of a motion. They much prefer that the motion be denied; that the defendants put in what proof they have, and then the Court makes a decision and the matter goes up on the entire record rather than just the plaintiff's testimony.

That is a policy—whether it's a good policy or bad policy—the Circuit has.

Mr. Campbell: I can appreciate that, your Honor, and I lose nothing in the circumstances here because it is my intention to rest my case, and rest it upon the record as produced by the Government. So I do not have a motion to save and I will——

The Court: Why don't you just rest your case instead of making a motion, and then I decide the matter on the evidence rather than upon the lack of evidence.

Mr. Campbell: Very well. Then I shall at this point, since I do not intend to put on evidence, rest my case upon the Government's proof. [169]

The Clerk: Is he withdrawing his motion, your Honor?

The Court: I understand you are withdrawing your motion.

Mr. Campbell: I will withdraw the motion and will rest my case.

The Court: Then I assume that in that situation, if there is no other evidence, we can proceed with the discussion of the case in chief. Is that right?

Mr. Campbell: Yes, your Honor. In which event——

The Court: I am addressing my remarks now to the United States Attorney, I suppose the United States Attorney doesn't have any other testimony.

Mr. Jacobson: That is true, your Honor.

(Whereupon, a statement was made by the Court, followed by statements of both counsel.)

The Court: * * * I will take this matter under submission. And I will review the authorities and do a little research of my own and let you know what my conclusion will be.

Mr. Campbell: Both cases, your Honor?

The Court: Both cases.

The Court will stand in recess until 10:00 o'clock Monday morning.

(Whereupon, the above-entitled matter was concluded.) [170]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official Court Reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 5th day of February, 1958.

/s/ MARIE G. ZELLNER,
Official Reporter;

/s/ DON P. CRAM,
Official Reporter.

[Endorsed]: Filed February 5, 1958. [171]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Anna Valetta Nocita, Claimant and Appellant in the above-entitled action, states that the points on which she intends to rely on the appeal in this action are as follows:

1. The District Court was without jurisdiction to render judgment in the above-entitled proceeding.
2. The Findings of Fact, Conclusions of Law, and Judgment are not supported by the evidence.
3. The Judgment is contrary to law.
4. Errors occurring in the admission and rejection of evidence.

Dated: January 3rd, 1958.

/s/ WALTER M. CAMPBELL,
Attorney for Claimant and
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed January 6, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages 1 to 31, inclusive, containing the original:

Libel of Information.

Answer to Libel Information.

Affidavit in Support of Answer and Claim for the Return of Automobile.

Opinion.

Objections to Findings of Fact, Conclusions of Law, and Judgment.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

Statement of Points on which Appellant intends to rely.

B. One volume of Reporter's Official Transcript of Proceedings had on October 31, 1957, and November 1, 1957.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60 has been paid by appellant.

Dated: February 5, 1958.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 15882. United States Court of Appeals for the Ninth Circuit. Anna Valetta Nocita, Claimant of One 1957 Ford Thunderbird Automobile, etc., Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 7, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15,882

ANNA VALETTA NOCITA,

Appellant

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT
INTENDS TO RELY ON APPEAL

Appellant, Anna Valetta Nocita, hereby adopts the Statement of Points on Which Appellant Intends to Rely, as set forth in the Designation of Record in the above-entitled cause, except that appellant will not rely upon Point 4 therein, to wit, "Errors occurring in the admission and rejection of evidence."

Dated: February 13th, 1958.

/s/ WALTER M. CAMPBELL,
Attorney for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 20, 1958.

